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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 113.

THE MISSISSIPPI AND RUM RIVER BOOM COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM C. PATTERSON, JR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

FILED APRIL 28, 1876.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the district of Minnesota, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you or some of you, between William C. Patterson, j'r, plaintiff, and the Mississippi and Rum River Boom Company, defendant, a manifest error hath happened, to the great damage of the said defendant, as is said: we, being willing that such error, if any hath occurred, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the second Monday of October next, that the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this twenty-seventh day of December, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States the one hundredth year.

[SEAL.] H. E. MANN,
Clerk of the Circuit Court of the United States of America for the District of Minnesota.

2 *The answer of the judges of the circuit court of the United States for the district of Minnesota in within writ mentioned.*

The record and proceedings whereof mention is within made, with all things concerning the same, are hereby respectfully certified to the justices of the Supreme Court of the United States within mentioned in a certain schedule to this writ annexed as within it is commanded.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at S't Paul, in the district of Minnesota, this twenty-fourth day of April, in the year of our Lord one thousand eight hundred and seventy-six, and of our Independence the one hundredth year.

[SEAL.] H. E. MANN,
Clerk U. S. Circuit Court, District of Minnesota.

(Indorsed:) 171. United States circuit court, district of Minnesota. William C. Patterson, jr., vs. The Mississippi & Rum River Boom Company. Writ of error. Filed Dec. 27, 1878. H. E. Mann, clerk.

3 UNITED STATES OF AMERICA, *ss:*

To William C. Patterson, jr., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday in October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Minne-

sota, wherein The Mississippi and Rum River Boom Company is plaintiff in error, and you are the defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Dated this 27th day of December, A. D. 1875.

JOHN F. DILLON,
Circuit Judge.

4 (Indorsed:) 171. United States circuit court, district of Minnesota. William C. Patterson, j'r, vs. The Mississippi & Rum River Boom Company. Citation.

Due service of the within citation by copy upon us is admitted this 27th day of December, A. D. 1875.

BIGELOW, FLANDRAU & CLARK,
Plaintiff's Attorneys, S't Paul, Minn.

Filed Dec. 27, 1875.

H. E. MANN, *Clerk.*

5 *Notice.*

In the matter of the application of the Mississippi and Rum River Boom Company for the appointment of three commissioners to examine and make an appraisal and award of the value of certain lands hereinafter described, situated in the county of Anoka and State of Minnesota, which the said corporation has entered upon, and which it desires to enter upon, occupy, have, possess, and enjoy for boom purposes, as designated in the charter of said company, and to fix and assess the compensation and damages to be paid therefor by said company to the owner thereof.

To the first division of the S't Paul and Pacific R. R. Co., and to William C. Patterson, and to any and all others having or claiming any estate or interest in or to the lands hereinafter described.

You, and each of you, are hereby notified that an application will be made by and on behalf of the Mississippi and Rum River Boom Company to the Hon. Charles E. Vanderburgh, judge of the district court for the fourth judicial district of the State of Minnesota, on the 18th day of July, A. D. 1874, at a special term of the said district court in and for said Hennepin County, then and there to be held, at 10

6 o'clock a. m., for the appointment of three commissioners to examine and make an appraisal and award of the value of the following-described real estate situated in the county of Anoka and State of Minnesota, which the said corporation has entered upon, and which it desires to enter upon, occupy, have, possess, and enjoy for the purposes designated in the charter of said company, and to assess and fix the compensation and damages to be paid by the said company to the owner or owners and claimants of said lands, by reason of the appropriation thereof for boom purposes, as provided in and by said charter of said company, that is to say, lots five (5) and six (6) in section twenty-seven (27), and five (5) and six (6) of section thirty-five (35); all in township thirty-one (31) north, of range twenty-four (24) west.

Dated June 20, 1874.

LOCHREN, McNAIR AND GILFILLAN,
Att'ys for the Miss. and Rum River Boom Company.

STATE OF MINNESOTA,
Hennepin County, ss:

Granville S. Pease, being duly sworn, says that during all the time of the publication, hereinafter referred to, he was and still is the proprietor and publisher of The Anoka Union, a weekly newspaper
7 printed and published at the town of Anoka, in the county of Anoka and State of Minnesota, and that to affiant's own personal knowledge the notice of the Mississippi and Rum River Boom Co., a printed copy of which is hereto annexed, was printed and published in said newspaper once in each week, on the publication-day of said newspaper, for four successive weeks, the first day of such publication being Tuesday, the 23d day of June, A. D. 1874, and the last day of such publication being Tuesday, the 14th day of July, A. D. 1874.

GRANVILLE S. PEASE.

Subscribed and sworn to before me this 15th day of July, A. D. 1874.

[NOTARIAL SEAL.] J. B. GILFILLAN,
Notary Public, Hennepin County, Minnesota.

8 In the matter of the application of the Mississippi and Rum River Boom Co. for the appointment of three commissioners to examine and make an appraisal and award of the value of certain lands in the county of Anoka and State of Minnesota, which the said corporation has entered upon, and which it intends to enter upon, occupy, have, possess, and enjoy for the purposes designated in the charter of said company, and to fix the compensation to be paid to the owner thereof by said boom company.

To the Hon. Charles E. Vanderburgh, judge of the district court for the fourth judicial district in the State of Minnesota:

The Mississippi and Rum River Boom Co., by Lochren, McNair and Gilfillan, its attorneys, respectfully represent that the said applicant is a corporation duly created and incorporated, organized, existing, and doing business as such under the laws of the State of Minnesota, that is to say, an act of the legislative assembly of the late Territory of Minnesota, entitled "An act to incorporate the Mississippi and Rum River Boom Company," approved May 21, 1857, and an act of the legisla-
9 ture of the State of Minnesota, entitled "An act to amend an act entitled "An act to incorporate the Mississippi and Rum River Boom Company," approved July 23, 1857—approved March 8, 1862—and an act of the legislature of said State, entitled "An act to amend an act entitled an act to amend an act entitled an act to incorporate the Mississippi and Rum River Boom Company," approved May 21st, 1857, approved March 8, 1862; and to amend an act entitled "An act to incorporate the Mississippi and Rum River Boom Company," approved May 21, 1857, approved March 9, 1867; and an act of the legislature of said State entitled "An act to amend sections ten (10) and eleven (11) of chapter one hundred and thirty-four of the special laws of 1867, in relation to the Mississippi and Rum River Boom Company," approved March 6th, 1868, and an act of the legislature of said State, entitled "An act to amend section 13 of chapter 134 of the special laws of 1867, relative to the Mississippi and Rum River Boom Company," approved Feb'y 28, 1872, with full power and authority as such corporation to construct, maintain, and keep in repair any boom or booms on the Mississippi River within the limits specified in said acts. That your petitioner as such corporation has for many years carried on business under

said acts and performed all the duties devolved upon it, and
10 to that end has constructed and maintained and kept in repair, and is desirous of maintaining in pursuance of said acts a boom for logs in the Mississippi River aforesaid within the limits aforesaid and in front of, opposite to, and adjoining the following described real estate situate in the county of Anoka and State of Minnesota; that is to say, lot numbered five (5), containing eight and $\frac{67}{100}$ acres, and lot numbered six (6), containing three and $\frac{28}{100}$ acres, both of section numbered twenty-seven (27), and lot numbered five (5), containing eleven and $\frac{39}{100}$ acres, and lot numbered six (6), containing eleven $\frac{13}{100}$ acres, both in section numbered thirty-five (35), all in township numbered thirty-one (31) north, of range twenty-four (24) west, of the 4th meridian, and containing in all thirty-four and $\frac{46}{100}$ acres of land, according to the United States Government survey thereof.

That said last described parcel of land constitutes an island, and the said other parcels constitutes parts of small islands, all in the Mississippi River within the limits specified in sec. ten (10) of said act of March 9th, 1867, and all mostly low lands and liable to be overflowed in seasons of high water, and the same are so situated in the said
11 river that between the same and the westerly bank of said river exists a natural basin or pocket suitable for and capable of receiving and safely holding, moving, and booming large quantities of pine logs.

That the Mississippi River opposite and contiguous to said lands is a public highway and is a navigable river, and that more than one hundred millions feet of pine logs, cut near the headwaters of the Mississippi River and Rum River, in said State, are every year navigated and floated on said river past said land, for the owners of such logs, to points near the Falls of S't Anthony, where the same are manufactured into lumber; that to preserve said logs from the perils of such navigation by being swept by freshets in said river past the mills where the same are to be manufactured, and over the said falls, whereby they would become lost or of little value to the owners, it is necessary to have booms with piers to hold the said logs in the said river, and that it is the duty of your petitioner under the acts aforesaid to construct and maintain such booms. And that in pursuance of such duty and in pursuance of the said acts, and by the consent, permission, and author-
12 ity of the owners of said lands, your petitioner has for more than three years last past constructed, maintained, and kept in repair at great expense booms with piers upon the said lands and between the said islands, and between the same and the main westerly bank of said river, and connecting all of the same together by means of such booms, and has paid, laid out, and expended in the construction of such booms and piers large sums of money, amounting in all to twenty thousand dollars and upwards, and the said booms have been in co tinuous use for receiving, holding, control'ing, and handling pine logs during all of said time, and has become and are actual public necessity.

That in order to properly conduct the business of your petitioner under the acts aforesaid, it is and will continue to be necessary to maintain and operate the said booms upon and contig'ous to the said lands, and to that end to enter upon and occupy, have, possess, and enjoy all of the said lands above described, for the purpose, among other things, of placing thereon piers and other erections to which to fasten such booms upon the top of as well as between the said islands, in order to secure the said logs and prevent their being floated down the said river
13 and out upon said lands, whereby your petitioner would be sub-

jected to action for damages at the suit of the owners of said lands, and the said boom company, your said petitioner, is desirous of appropriating all of the said lands for the purposes aforesaid, and for other boom purposes.

That the said lands were a part of the lands granted to the Territory of Minnesota by act of Congress entitled "An act making a grant of land to the Territory of Minnesota in alternate sections to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama to aid in the construction of a certain railroad in said State," approved Ma'ch 3, 1857, and which lands were in pursuance of said act passed and conveyed to the first division of the S't Paul and Pacific Railroad Company; that the said railroad co., in consideration of the taking possession of the said lands by your said petitioner, and the making of the said expenditures and improvements by your petitioner as aforesaid, promised and agreed to and with your said petitioner from time to time and at various times to sell and convey all the said lands to your said petitioner as soon as the said railroad co. should be able to acquire and should acquire a complete title to said lands.

14 That the said R. R. co. did on or about the 1st day of May, 1873, acquire a perfect and full title to all the said lands; and thereafter, on or about the 28th day of May, 1873, did execute a pretended conveyance thereof to one William C. Patterson, j'r, of Springfield, in the State of Illinois, and the same have not, nor has any part thereof ever been conveyed to your said petitioner.

Wherefore your petitioner asks the appointment of three commissioners to examine and make an appraisal and award of the value of said lands and of each parcel thereof seperately, and to assess and fix the compensation and damages to be paid to the owner thereof by said boom company according to law.

Dated this twentieth day of May, A. D. 1874.

LOCHREN, McNAIR AND GILFILLAN,
Att'ys for the Mississippi and Rum River Boom Company.

15 (Indorsed:) Motion papers used in the written application this 18th day of July, 1874, and ordered to be filed with the clerk of Anoka Co. C. E. Vanderburgh, judge.

(Indorsed:) Office of the clerk of the district court, 4th judicial district, Anoka, Minnesota. Filed July 18th, A. D. 1874. A. C. Tilden, clerk.

16 STATE OF MINNESOTA,
Anoka County:

In the matter of the application of the Mississippi and Rum River Boom Company for the appointment of three commissioners to examine and make an appraisal and award of the value of certain lands in the county of Anoka and State of Minnesota (and hereinafter described), which the said corporation has entered upon, and which it intends to enter upon, occupy, have, possess, and enjoy for the purposes designated in the charter of said company, and to fix the compensation to be paid to the owner thereof by said company, by reason of the appropriation thereof for boom purposes.

Notice.

In the matter of the application of the Mississippi and Rum River Boom Company for the appointment of three commissioners to examine and make an appraisal and award of the value of certain lands hereinafter described, situated in the county of Anoka, and State of Minnesota, which the said corporation has entered upon and which it desires to enter upon, occupy, have, possess, and enjoy for
17 boom purposes, as designated in the charter of said company, and to fix and assess the compensation and damages to be paid therefor by said company to the owner thereof.

To the first division of the S't Paul and Pacific R. R. Co., and to William C. Patterson, j'r, and to any and all others having or claiming any estate or interest in or to the lands hereinafter described :

You and each of you are hereby notified that an application will be made by and on behalf of the Mississippi and Rum River Boom Company to the Hon. Charles E. Vanderburgh, judge of the district court for the 4th judicial district of the State of Minnesota, at the court-house in the city of Minneapolis, in the county of Hennepin, within said judicial district and State of Minnesota, on the 18th day of July, A. D. 1874, at a special term of the said district court in and for said Hennepin County, then and there to be held at 10 o'clock a. m., for the appointment of three commissioners to examine and make an appraisal and award of the value of the following described real estate situate in the county of Anoka, and State of Minnesota, which the said corporation has entered upon, and which it desires to enter upon, occupy, have, possess,
18 and enjoy for the purposes designated in the charter of said company, and to assess and fix the compensation and damages to be paid by the said company to the owner or owners and claimants of said lands, by reason of the appropriation thereof for boom purposes as provided in and by said charter of said company, that is to say :

Lots five (5) and six (6) in section twenty-seven (27), and lots five (5) and six (6) of section thirty-five (35), all in township thirty one (31) north of range twenty-four (24) west.

LOCHREN, McNAIR AND GILFILLAN,
Att'ys for the Mississippi and Rum River Boom Company.

At a special term of the district court in and for the fourth judicial district, county of Hennepin, and State of Minnesota, held at the court-house in the city of Minneapolis, in said Hennepin County, on the 18th day of July, A. D. 1874, at 10 o'clock a. m.

Present, Hon. Charles E. Vanderburgh, judge of said court.

On reading and filing the application of said Mississippi and
19 Rum River Boom Company, by their attorneys Lochren, McNair and Gilfillan, and due proof of the giving of more than ten days' notice of such application (of which notice the annexed printed notice is a copy) by the due publication thereof in the Anoka County Union, a weekly newspaper printed and published at the town of Anoka, in the county of Anoka, and State of Minnesota, once in each week, on the publication-day of said paper, for four successive weeks, on the 23d and 30th days of June, and on the 7th and 14th days of July, 1874, and after hearing the said the Mississippi and Rum River Boom Company, by their said attorneys, and Messr's Atwater and Babcock, the attorneys of and for William C. Patterson, j'r, in opposition thereto.

Now on motion of Lochren, McNair and Gilfillan, said attorneys for

and in behalf of said company, James McCann and Charles T. Woodbury, of the county of Anoka aforesaid, and Ezra Hanson, of the county of Hennepin aforesaid, are hereby appointed commissioners to examine and make an appraisal and award of the value of those several pieces or parcels of land in said notice and petition and hereinafter described, and to fix, assess, and make an award of the compensation and
20 damages to be paid for said several pieces or parcels of land by said company to the owner or owners thereof by reason of the taking, occupying, and appropriating of the same for boom purposes, in pursuance of and under the provisions of the act incorporating said company, that is to say: Lots five (5) and six (6) in section twenty-seven (27), and lots five (5) and six (6) in section thirty-five (35), all in township thirty-one (31) north of range twenty-four (24) west, in the county of Anoka, and State of Minnesota, and with the like powers and duties possessed by and conferred upon commissioners by law in such cases.

CHA'S E. VANDERBURGH,
Dist. Judge 4th Dist. Minn.

21 (Indorsed:) Order made this 18th day of July, 1874, and directed to be filed with the clerk of Anoka County accordingly. C. E. Vanderburgh, judge.

(Indorsed:) Office of the clerk of the district court, 4th judicial district, Anoka County, Minnesota. Filed July 18th, A. D. 1874. A. C. Tilden, clerk. Book B of judgments, pages 38 and 39.

22 District court, Hennepin County.

In the matter of the application of the Mississippi and Rum River Boom Company for the appointment of commissioners. July 18, 1874. Special term.

Applicants appear and produce their petition and proof of publication of notice, which are placed on file.

William C. Patterson, j'r, claimant of certain lands embraced in said petition, appears specially by his counsel, Atwater and Babcock, esq's, and object that there is nothing in the papers showing any jurisdiction of the property in question or of the person of the said land owner.

2nd. There is no sufficient description of the property proposed to be condemned nor any necessity shown for its condemnation for the purposes claimed.

3d. There is no law referred to except the act of 1872 authorizing the condemnation of islands, which law the contestants offer to show never passed the legislature.

4th. And the said claimant, W. C. Patterson, asks leave to show that there is no necessity for the condemnation of such land at this time.

These objections were overruled and said claimant except'.

23 The applicants here produced the several statutes under which the authority is claimed and referred to in their notice herein published.

The court proceeds thereupon to appoint commissioners under the application. James McCam, Cha's T. Woodbury, of Anoka County; Ezra Hanscom, of Hennepin County, are so appointed. And an order in due form directed to be made accordingly.

C. E. VANDERBURGH,
Judge.

(Indorsed): Appointment of commissioners by court. Office of the clerk of the district court, 4th judicial district, Anoka County, Minnesota. Filed July 18, A. D. 1874. A. C. Tilden, clerk. See book B, page 37. A. C. Tilden, clerk.

24 STATE OF MINNESOTA, *Anoka County:*

District court, fourth judicial district.

In the matter of the application of the Mississippi and Rum River Boom Company, for the appointment of three commissioners to examine and make an appraisal and award of the value of certain lands hereinafter described, situate in the county of Anoka, and State of Minnesota, which the said corporation has entered upon, and which it desires to enter upon, have, occupy, possess, and enjoy for boom purposes, as designated in the charter of said company, and to fix and assess the compensation and damages to be paid therefor by said company to the owners thereof, to wit: Lots five (5) and six (6) in section twenty-seven (27), and lots five (5) and six (6) in section thirty-five (35), all in township thirty-one (31) north of range twenty-four (24) west.

STATE OF MINNESOTA,
County of Anoka, ss:

We, James McCann and Charles T. Woodbury, of Anoka County, and Ezra Hanscom, of Hennepin County, having been appointed by
25 the Hon. Charles E. Vanderburgh, judge of the above-named court, commissioners to examine and make an appraisal and award of the value of the lands hereinbefore described, and to fix and assess the compensation and damages to be paid therefor, as specified in the order of appointment on file—being duly sworn, doth each for himself depose and say that he will well and faithfully perform and discharge the duties devolving upon them as such commissioners to the best of their abilities and according to law.

JAMES McCANN.
C. T. WOODBURY.

Subscribed and sworn to before me this 30th day of March, A. D. 1875.

[NOTARIAL SEAL]. GEO. W. MORRELL,
Notary Public, Minn.

STATE OF MINNESOTA,
Hennepin County, ss:

I, Ezra Hanscom, one of the commissioners named in the order heretofore, on the 18th day of July, 1874, made and filed herein, being duly sworn, do depose and say that I will well and faithfully execute and perform the duties of said appointment according to law to the best
26 of my abilities: So help me God.

E. HANSCOM.

Subscribed and sworn to before me this 28th day of July, A. D. 1874.

[SEAL.] HENRY M. WILLIAMSON,
Notary Public, Hennepin Co., Minn.

27 (Indorsed:) In the matter of application of the Mississippi and Rum River Boom Company. Office of the clerk of the district

court, 4th judicial district, Anoka County, Minnesota. Filed March 30th, A. D. 1875. A. C. Tilden, clerk.

(Indorsed :) Oath of office as commissioners. Appo nted by the court. James McCann, Charles T. Woodbury, and Ezra Hanscom, commissioners.

28 MINNEAPOLIS, *April* 30, '75.

In the matter of the application of the Mississippi and Rum River Boom Company to condemn certain lots of land, the property of Wm. C. Patterson.

William C. Patterson, j'r, comes before the commissioners appointed by the court to condemn certain lands belonging to him, and objects to the said commissioners taking any steps toward such condemnation, or in any way interfering with his rights in said land, which is described in the annexed printed notice published by said Boom Company, on the grounds that said company have no right or power to condemn land for any purpose; that it is a private corporation for private purposes, and that the condemnation of such land is not for a public use; that the statutes under which said company assume to act in such condemnation are unconstitutional and void.

R. B. GALUSHA AND CHAS. E. FLANDRAN,
Att'ys for Wm. C. Patterson.

29 *Notice.*

In the matter of the application of the Mississippi and Rum River Boom Company for the appointment of three commissioners to examine and make an appraisal and award of the value of certain lands hereinafter described, situate in the county of Anok and State of Minnesota, which the said corporation has entered upon, and which it desires to enter upon, occupy, have, possess, and enjoy, for boom purposes, as designated in the charter of said company, and to affix and assess the compensation and damages to be paid therefor by said company to the owner thereof.

To the first division of the St. Paul and Pacific Railroad Company and to William C. Patterson, and to any and all others having or claiming any estate or interest in or to the land hereinafter described:

You, and each of you, are hereby notified that application will be made by and on behalf of the Mississippi and Rum River Boom Company to the Hon. Charles E. Vanderburgh, judge of the district court for the fourth judicial district of the State of Minnesota, at the court-house in the city of Minneapolis, in the county of Hennepin, within said judicial district and State of Minnesota,
30 on the 18th day of July, 1874, at a special term of the said district court in and for said Hennepin County then and there to be held, at 10 o'clock a. m., for the appointment of three commissioners to examine and make an appraisal and award of the value of the following described real estate, situate in the county of Anoka and State of Minnesota, which the said corporation has entered upon, and which it desires to enter upon, occupy, have, possess, and enjoy, for the purposes designated in the charter of said company, and to assess and fix the compensation and damages to be paid by the said company to the owner or owners and claimants of said lands, by the reason of the

appropriation thereof for boom purposes, as provided in and by said charter of said company, that is to say:

Lots five (5) and six (6) in section twenty seven (27), and lots five (5) and six (6) of section thirty-five (35), all in township thirty-one (31) north, of range twenty-four (24) west.

Dated June 20, 1874.

LOCHREN, McNAIR AND GILFILLAN,
Att'ys for the Mississippi and Rum River Boom Company.

31 (Indorsed:) Objections of William C. Patterson vs. Jurisdiction of Boom Co. and Commissioners. Office of the clerk of the district court, 4th judicial district, Anoka County, Minn. Filed May 6, A. D. 1875. A. C. Tilden, clerk.

32 District court, fourth judicial district.

STATE OF MINNESOTA.
County of Anoka:

In the matter of the application of the Mississippi and Rum River Boom Company for the appointment of commissioners to examine and make an appraisal and award of the value of certain lands hereinafter described, situate in the county of Anoka and State of Minnesota, which said corporation has entered upon, and which it desires to enter upon and occupy, possess, and enjoy for boom purposes, as designated in the charter of said company, and to fix and assess the compensation and damages to be paid therefor by said corporation to the owners of said land, viz: Lots five (5) and six (6), in section twenty-seven (27), and lots five (5) and six (6) in section thirty-five (35), all in township thirty-one (31) north, of range twenty-four (24) west.

Whereas in the matter above entitled, the district court has appointed Charles T. Woodbury and James McCann, of the county of Anoka, and Ezra Hanscom, of the county of Hennepin, in said State of Minnesota, as commissioners to examine and make an appraisal and award of the value of the lands mentioned in the title of this paper, and to fix
33 and assess the compensation and damages to be paid therefor, as specified in the order of appointment on file in this court in the matter above entitled; and whereas the said commissioners have duly qualified and entered upon the discharge of their duties as such commissioners, and have published in the Anoka County Republican, a newspaper printed in said Anoka County, a notice to William Patterson, j'r, the owner of said land, that they, the said commissioners, would meet on the lands above referred to on the 30th day of April, A. D. 1875, at 11 o'clock a. m., in the forenoon of that day, to appraise the value of the said several pieces or parcels of the same, commencing with the first above described, and to assess and fix the compensation and damages to be paid therefor as aforesaid; and whereas it is desired on the part of both parties that a more convenient opportunity be given for putting in evidence before said commissioners as to the value of said lands and the compensation and damages that should be awarded by said commissioners to the owner therefor than can be had at the meeting of said commissioners upon said land at the time and place mentioned in said notice: It is hereby stipulated and agreed by the undersigned
34 attorneys for said Mississippi and Rum River Boom Company and said William C. Patterson, j'r, respectively, that the said commissioners shall hold a meeting on the 30th of April, A. D. 1875, at

the office of Lochren, McNair and Gilfillan, at Minneapolis, in the county of Hennepin, in said State, at 2 o'clock p. m. of that day, and at such other times as the said commissioners may adjourn such meeting thereafter, and that at such meeting or meetings either or both of said parties may present to said commissioners evidence on the aforesaid matters as they may deem proper.

LOCHREN, McNAIR AND GILFILLAN,
Att'ys for the Mississippi and Rum River Boom Company.
BIGELOW, FLANDRAN AND CLARK, AND
R. B. GALUSHA,
Att'ys for William C. Patterson, j'r.

STATE OF MINNESOTA,
County of Anoka, ss:

W'm H. Campbell, of Anoka. in said county, being duly sworn, says that he is and during the whole time hereinafter mentioned has been publisher of the Anoka Republican, a weekly newspaper printed and published at Anoka, in said county and State aforesaid, and that
35 the notice to W'm C. Patterson, j'r, a printed copy of which is hereto annexed, was published in said newspaper for four successive weeks prior to the 30th day of April, one thousand eight hundred and seventy-five, at least once in each week, which publication commenced on the first day of April, A. D. 1875, and was so published on the 29th day of April, A. D. 1875.

WILLIAM H. CAMPBELL.

Subscribed and sworn to before me this 1st day of May, 1875.
[SEAL.] HIRAM THORNTON,
Judge of Probate.

Printer's bill: Four fols. 4 weeks, $7.20; affidavit, 25—$7.45.

District court, fourth judicial district.

STATE OF MINNESOTA,
County of Anoka, ss:

In the matter of the application of the Mississippi and Rum River Boom Company for the appointment of three commissioners to examine and make an appraisal and award of the value of certain lands hereinafter described, situate in the county of Anoka and State of Minnesota, which the said corporation has entered upon, and which it desires to enter upon, occupy, have, possess, and enjoy for boom pur-
36 poses, as designated in the charter of said company, and to fix and assess the compensation and damages to be paid therefor by said corporation to the owner thereof, by reason of the appropriation of the same for boom purposes.

We, the undersigned, James McCann and Charles T. Woodbury, of Anoka County, and Ezra Hanscom, of Hennepin County, duly appointed by the Hon. Charles E. Vanderburgh, judge of the 4th judicial district of the State of Minnesota, by his certain order made in the above-entitled matter on the 18th day of July, A. D. 1874, and filed in the office of the clerk of said district court in and for said county of Anoka, as commissioners to examine and make an appraisal and award of the value of those certain pieces or parcels of land situate in the county of Anoka and State of Minnesota, that is to say:

Lots five (5) and six (6), section twenty-seven (27), and lots five (5)

and six (6), of section thirty-five (35), all in township thirty-one (31) north, of range twenty-four (24) west; and to make an award of the compensation and damages to be paid therefor by the said corporation to the owner thereof, by reason of the taking, occupying, and appropriating of the same by the said corporation for boom purposes

37 in pursuance of the acts incorporating the said boom company, and the amendments thereto, do hereby certify, return, and report that, in pursuance of the said order, having been first severally duly sworn well, faithfully, and honestly to perform and discharge our duties as such commissioners, did enter upon our duties as such commissioners, and having satisfied ourselves that William C. Patterson, jr., the owner of said lands, was not a resident of the State of Minnesota, and was not personally within said State, and had no residence therein, we did cause notice to be given to the said William C. Patterson, jr., by the publication of such notice in the Anoka Republican, a weekly newspaper printed and published at Anoka, in the county of Anoka and State of Minnesota, for four successive weeks immediately preceeding the 30th day of April, A. D. 1875, that we, as such commissioners, would meet upon the above-described premises and lands on the said 30th day of April, A. D. 1875, at 11 o'clock a. m. of that day, to appraise and value the said lands, and to assess and fix the compensation and da nages to be paid therefor, as aforesaid, a printed copy of which said notice, with the proof of the publication thereof, is hereto annexed and made a part of this report.

38 That pursuant to the said order and the said notice so given as aforesaid, we did, as such commissioners, meet upon the aforesaid premises and lands on Friday, the 30th day of April, A. D. 1875, at 11 o'clock a. m. of that day, at which time and place appeared before us the said William C. Patterson, jr., by Bigelow, Flandran and Clark, his attorneys, also Wm. W. Hale, who afterwards claimed to have a mortgage upon the said premises; and that we, as such commissioners, did thereupon, then and there, carefully examine every portion of the said lands, commencing with the first above described, and afterwards, on the same day, by the consent and agreement of all the parties in interest, and pursuant to the written stipulation of the said Bigelow, Flandran and Clark, and of Lochren, McNair and Gilfillan, the latter acting as the attorneys of the said boom company, which stipulation is hereto annexed and made a part of this report.

We, as such commissioners, did adjourn from the said place to meet at the office of the said Lochren, McNair and Gilfillan at 2 o'clock p. m. of the same day, for the purpose of hearing the testimony of such witnesses as should be offered by the respective parties in interest, at which last-named time and place we, as such commissioners, again met,

38½ and did then and there proceed to hear the testimony of George W. Cooley, Caleb D. Davis, Sam'l H. Chute, Joel B. Bassett, Geo. A. Camp, and J. W. Farnham, witnesses produced, sworn, and examined on the part of said corporation, and of the said W'm W. Hale, William Garcelan, Jno. W. Dunham, and Edward S. Brown, witnesses on the part of said owner and claimant and mortgagee of said land, and after careful, mature consideration and deliberation thereon, we, the said commissioners, have unanimously appraised and awarded the value of the said several pieces and parcels of land at the following sums respectively, that is to say: The said lot five (5), in section twenty-seven (27), at the sum of three hundred dollars; and the said lot six (6), in section twenty-seven (27), at the sum of seven hundred dollars; and the said lot five (5), of section thirty-five (35), at the sum of one thousand

dollars; and the said lot six (6), in section thirty-five (35), at the sum of one thousand dollars, and at the aggregate sum of three thousand dollars, at the present time, that being the time the said corporation is about to enter upon, use, occupy, and enjoy the said lands for boom purposes as aforesaid, and do fix upon, assess, and award the said sum as the amount of compensation and damages to be paid by the said corporation to the owner or owners and claimant of said parcels of land for and on account of, and by reason of, the appropriation of the same by the said corporation for boom purposes, as provided in and by the charter of said corporation.

And we, the said commissioners, do hereby tax the costs of this award at the sum of eighty dollars.

In witness whereof we hereunto set our hands this 5th day of May, 1875.

JAMES McCANN,
C. T. WOODBURY,
EZRA HANSCOM,
Commissioners.

(Indorsed:) State of Minnesota, county of Anoka. District court, 4th judicial district. In the matter of the application of the Miss. and Rum River Boom Co. vs. W. C. Patterson. Award of damages of commissioners. Filed May 6, A. D. 1875. A. C. Tilden, clerk.

District court, fourth judicial district.

STATE OF MINNESOTA,
County of Anoka:

In the matter of the application of the Mississippi and Rum River Boom Company and of the appointment of commissioners, and the assessment and award of the damages sustained by the owners and claimants of certain lands hereinafter described, situate in the county of Anoka and State of Minnesota, appropriated by said boom co. for boom purposes, by reason of such appropriation thereof, assessed and awarded by James McCann, Charles T. Woodbury, and Ezra Hanscom, commissioners for that purpose duly appointed, and whose report thereof was filed in the office of the clerk of this court, on the 5th day of May, A. D. 1875. The said lands being known and described as follows, viz: Lots five (5) and six (6) in section twenty-seven (27), and lots five (5) and six (6) in section thirty-five (35), all in township thirty-one (31) north, of range twenty-four (24) west.

To A. C. Tilden, esq., clerk of the above-named court, and to W'm W. Hale, William C. Patterson, j'r, and to all persons having or claiming any right, title, interest or estate in or lien upon the above-described lands or any part thereof:

Take notice that the Mississippi and Rum River Boom Company above named appeal to the district court in and for the fourth judicial district, county of Anoka, State of Minnesota, from the decision and award of damages in the above entitled matter, and from each and every part thereof, made by James McCann, Charles T. Woodbury, and Ezra Hanscom, commissioners for that purpose duly appointed, and whose report thereof was filed in the office of the clerk of the above-named court on the 6th day of May, A. D. 1875.

Dated May 28, 1875.

LOCHREEN, McNAIR AND GILFILLAN,
Att'ys for the Mississippi and Rum River Boom Company, Appellants.

(Indorsed:) Appeal from the award of damages. In the matter of the application of the Mississippi and Rum River Boom Company. Received and filed May 29, A. D. 1875. A. C. Tilden, clerk dist. court Anoka County, Minn.

43 District court, fourth judicial district.

STATE OF MINNESOTA,
County of Anoka:

In the matter of the assessment of damages for the taking of private property for the use of the Mississippi and Rum River Boom Company by James McCann, Charles T. Woodbury, and Ezra Hanscom, commissioners appointed by the Hon. Charles E. Vanderburgh, judge of the court above named, for that purpose, by his order dated July 18, 1874, and now on file in the office of the clerk of said court, William C. Patterson, j'r, appellant.

To said Mississippi and Rum River Boom Company and to the clerk of the court above named and said district court:

Take notice that I, the said William C. Patterson, j'r, hereby appeal from the award and appraisement of the value of the land of this appellant, proposed to be entered upon and taken by said Mississippi and Rum River Boom Company for boom purposes, as contained and set forth in the report of the said commissioners in the matter above entitled, dated the 5th day of May, 1875, and filed in the office of the clerk of the said court on the 6th day of May, 1875, to the district court in and for the county of Anoka above named. This appeal is taken to
44 the said district court from each and every part of said report and from the award and appraisement made by said commissioners of the value of each and every parcel of the lands of this appellant described in said award, viz, lots numbered five (5) and six (6), of section twenty-seven (27), and lots numbered five (5) and six (6) of section thirty-five (35); all in township thirty-one (31) north, of range twenty-four (24) west, in said Anoka County, State of Minnesota.

This appeal is taken upon the following grounds, among others:

First. Because said awards and appraisements of the said commissioners as to each and every of the said parcels of lands above described is grossly inadequate and far below the actual value of the said lands as to each of said parcels, in that said award and appraisement is not to exceed one-fourth in amount of the actual value of said lands.

Second. Because said commissioners, by virtue of the proceeding in the matter of the taking of said lands by said respondent for the purpose named in the report of said commissioners, and the said order to them issued and directed by the judge of said court, obtained no jurisdiction over said lands, or any part thereof, for any purpose whatever, and said award has no force or effect.

45 And said appellant, in taking this appeal, waives no objections to the regularity or validity of the proceedings in said matter, but expressly reserves the same as to each and every part of the same from the presentation of the petition of said respondent herein to the judge of said court for the appointment of said commissioners to the close of said proceedings.

This appeal is taken both upon questions of law and fact.

Dated May 31st, 1875.

WM C. PATTERSON, J'R, *Appellant*,
R. B. GALUSHA, AND
BIGELOW, FLANDRAN AND CLARK,
Att'ys for Appellant.

46 (Indorsed:) District court, Anoka County. In the matter of the appeal of W'm C. Patterson, j'r, vs. The Mississippi and Rum River Boom Company. Notice of appeal from award of commissioners assessing damages, andc. Bigelow, Flandran and Clark and R B. Galusha, att'ys for appellant.

(Indorsed:) Office of the clerk of the district court, 4th judicial district, Anoka County, Minn. Received and filed June 5th, A. D. 1875. A. C. Tilden, clerk.

47 District court, fourth judicial district.

STATE OF MINNESOTA,
Anoka County:

WILLIAM C. PATTERSON, J'R, APPELLANT,
vs.
THE MISSISSIPPI AND RUM RIVER BOOM COMPANY, respondent.

In the matter of the application of said Mississippi and Rum River Boom Company for the condemnation of certain lands belonging to said appellant for the use of said respondent.

STATE OF ILLINOIS,
County of Sangamon, ss:

William C. Patterson, j'r, being duly sworn, deposes and says that he is the defendant and appellant in the above-mentioned suit; that said suit is now pending in the district court in the county of Anoka in the fourth judicial district of the State of Minnesota.

That when said suit was brought the said Mississippi and Rum River Boom Company was and still is a corporation created, organized under the act of the legislature of the late Territory (now State) of Minnesota, and the various amendments of the act incorporating said
48 company, and said respondent is now doing business in said State as such corporation, and is a citizen thereof; that this defendant, said Patterson, was, at the commencement of this suit or proceeding, a citizen of the State of Illinois, and ever since then has been and now is a citizen of the said State of Illinois.

That the matter in dispute in this controversy, exclusive of costs, exceeds the sum of five hundred dollars, the said lands involved therein being of the value of ten thousand dollars.

That said suit involves the taking of lands of said appellant, being his private property, for the use of said respondent, and involves the fee-simple of said land.

Wherefore your petitioner prays that said suit may be removed into the next circuit court of the United States, to be holden in said State and district of Minnesota, from said district court in and for Anoka County aforesaid, and he offers herewith good and sufficient security for his entering in such court, on the first day of its session, copies of all process, pleadings, depositions, testimony, and other proceedings in said suit, and doing such other appropriate acts as are by law required
49 to be done upon the removal of a suit into the United States court, and said appellant, for the purpose aforesaid, makes and files this his petition for the removal of said cause into the said circuit court of the United States for said district of Minnesota, and file in

connection therewith the bond required by the act of Congress in such cases made and provided, and prays that this court will accept such surety and proceed no further in this suit.

W. C. PATTERSON, J'R.

Subscribed and sworn to before me, a notary public in and for the county of Sangamon and State of Illinois, by said petitioner, this eighth day of June, A. D. 1875. Witness my hand and notarial seal.

[NOTARIAL SEAL.] T. S. WOOD,
Notary Public.

50 (Indorsed:) State of Minnesota, county of Anoka, dis't court. William C. Patterson, j'r, appellant, vs. The Mississippi and Rum River Boom Company, respondents. Petition for removal of cause to circuit court of U. S. Filed June 15, A. D. 1875. A. C. Tilden, clerk. R. B. Galusha & Bigelow, Flandran and Clark, att'ys for appellant.

51 District court, 4th judicial district.

STATE OF MINNESOTA,
County of Anoka:

WILLIAM C. PATTERSON, J'R, APPELLANT,
vs.
THE MISSISSIPPI AND RUM RIVER BOOM COMPANY, respondent.

Know all men by these presents, that I, William W. Hale, for and on behalf of the above-named William C. Patterson, j'r, as principal, and Thomas J. Buxton and Lorenzo D. Day, of Minneapolis, State of Minnesota, as sureties, are held and firmly bound unto the above-named Mississippi and Rum River Boom Company in the sum of one thousand dollars, lawful money of the United States, for which said sum, well and truly to be paid to the said Mississippi and Rum River Boom Company, its successors and assigns, and each of us, bind ourselves and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals, and dated this 14th day of June, 1875.

The condition of the above obligation is such, that whereas the said above-named appellant, William C. Patterson, j'r, is about to ap-
52 ply to the said above-named district court of Anoka County for an order removing the said above-entitled action or suit from the said court to the circuit court of the United States for the district of Minnesota, under and in pursuance of the acts of Congress in that case made and provided:

Now, therefore, if the said cause is so removed, and the said William C. Patterson, j'r, shall enter in said circuit court of the United States, on the first day of the next session thereof, a copy of the record in said action or suit, and shall pay all costs that may be awarded by said circuit court if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation shall be void, otherwise it shall remain in full force and effect.

W. W. HALE. [SEAL.]
T. J. BUXTON. [SEAL.]
LORENZO D. DAY. [SEAL.]

In presence of—
W. C. PATTERSON.

STATE OF MINNESOTA,
County of Hennepin, ss:

On this 14th day of June, 1875, personally appeared before me William W. Hale, Thomas J. Buxton, and Lorenzo D. Day, who are to me
53 well known to be the individuals described in and who executed the foregoing bond, and they severally acknowledged to me that they had executed the same as their free act and deed.

[NOTARIAL SEAL.] W. C. PATTERSON,
Notary Public, Hennepin County, Minn.

STATE OF MINNESOTA,
County of Hennepin, ss:

Thomas J. Buxton and Lorenzo D. Day, being each duly sworn, doth each for himself depose and say that he is one of the sureties in the foregoing bond; that he is worth the sum of two thousand dollars over and above all his just debts and liabilities and property exempt from execution.

T. J. BUXTON.
LORENZO D. DAY.

Subscribed and sworn before me this 14th day of June, 1875.

[NOTARIAL SEAL.] W. C. PATTERSON,
Notary Public, Hennepin County, Minn.

District court, 4 judicial district.

STATE OF MINNESOTA,
County of Anoka:

OFFICE OF CLERK OF COURT,
Anoka, June 19, 1875.

54 I hereby certify that the annexed and foregoing papers have been carefully compared with the originals on file in this office, and that the same are true, full, and correct copies of all the papers in the matter of the application of the Mississippi and Rum River Boom Company to condemn certain lots of land, the property of W'm C. Patterson, j'r, and in the case of W'm C. Patterson, j'r, appellant, vs. the Mississippi and Rum River Boom Company, respondent.

[SEAL.] A. C. TILDEN, *Clerk*,
By O. L. CUTTER, *Deputy*.

(Indorsed:) District court Anoka County. William C. Patterson, j'r, app't, vs. The Miss. and Rum River Boom Co., resp't. Bond on removal to circuit court U. S. Filed June 15, A. D. 1875. A. C. Tilden, clerk dist. court. Filed June 21, 1875. H. E. Mann, clerk.

55 United States circuit court, district of Minnesota. Term minutes. December term, A. D. 1875. December 13th, 1875.

WILLIAM C. PATTERSON, J'R,
vs.
THE MISSISSIPPI AND RUM RIVER BOOM Company.

This cause coming on to be hea'd, the plaintiff appeared by R. B. Galusha, esq., and Charles E. Flandran, esq., and the defendant by Mess'rs

Lochren, McNair, and Gilfillan. its attorneys, and a jury being called, came, to wit: M. C. Tuttle, E. G. Barron, John Nevins, S. P. Chandler, J. H. Neer, A. G. Miller, Henry Shanbut, W. F. Dunbar, W. H. Mitchell, Josiah Moore, Adam Buck, S. Rosenfels, who are duly empanneled and sworn.

The case is opened for the plaintiff by Cha's E. Flandran, esq.

W'm W. Hale is sworn and examined as a witness for plaintiff.

56 United States circuit court for the district of Minnesota. Term minutes December term, A. D. 1875. December 14, 1875.

WILLIAM C. PATTERSON, J'R,
vs.
THE MISSISSIPPI AND RUM RIVER BOOM Company.

This cause coming on for further trial, the parties appeared by their attorneys, and the jury heretofore sworn and impannelled herein being called, came.

W'm H. Hale is recalled and further examined as a witness for the plaintiff.

W'm Garcelon is sworn and examined as a witness for plaintiff.
Edward S. Brown " " " " " " " "
John Rollins " " " " " " " "
Horatio Holton " " " " " " " "
Sam'l Stanchfild " " " " " " " "

And here the plaintiff rests his case.

Sam'l H. Chuto is sworn and examined as a witness for defendant.
Suchell D. Todd " " " " " " " "
C. D. Dow " " " " " " " "
S. W. Farnham " " " " " " " "
O. C. Merriam " " " " " " " "
James O. Lovejoy " " " " " " " "
S. B. Lovejoy " " " " " " " "
Richard Chuto " " " " " " " "

And here defendant rests its case.

57, 58 United States circuit court for the district of Minnesota. Term minutes December term, A. D. 1875. December 15, 1875.

WILLIAM C. PATTERSON, J'R,
vs.
THE MISSISSIPPI AND RUM RIVER BOOM Company.

This cause coming on for further trial, the parties appeared by their attorneys, and the jury heretofore empannelled and sworn herein being called, came.

J. B. Gilfillan, esq., sums up for the defendant. Cha's E. Flandran, esq., sums up for the plaintiff.

Charge is given the jury by the court, and they retire, in charge of an officer duly sworn and qualified to attend them to consider of their verdict, and on being returned in court they present to the court their general verdict in writing in the words and figures following:

59 *General verdict.*

Circuit court of the United States, district of Minnesota.

WILLIAM C. PATTERSON, J'R, APPELLANT,
vs.
THE MISSISSIPPI AND RUM RIVER BOOM COMPANY, respondent.

We, the jury in the above-entitled action, assess the value of property in question, taken by the respondent from the appellant, described as follows, lots 5 and 6, in section 27, and lots 5 and 6, in section 35, all in town 31, of range 24, according to the United States Government survey, being in the county of Anoka, and State of Minnesota, at the sum of nine thousand three hundred and fifty-eight $\frac{33}{100}$ dollars ($9,358$\frac{33}{100}$), on the day when the same was taken by the boom company, and we find said sum of $9,358$\frac{33}{100}$ to be the compensation to be paid by said respondent to said appellant for the taking and appropriation of said land.

HORACE E. BANON,
Foreman of the Jury.

60 (Indorsed:) U. S. circuit court, dist. of Minnesota. W'm C. Patterson, app'l, vs. The Miss. and Rum River Boom Co. Verdict. Filed Dec. 15, 1875. H. E. Mann, clerk.

Also their special verdict, in the words and figures following, viz:

61 *Special findings.*

U. S. circuit court, district of Minnesota.

WILLIAM C. PATTERSON, J'R, APPELLANT,
vs.
THE MISSISSIPPI AND RUM RIVER BOOM COMPANY.

1. We, the jury in the above-entitled action, assess the value of the lands in question, aside from any consideration of its value for boom purposes, at the sum of three hundred dollars.

2. We assess and fix upon it, in view of its adaptability for boom purposes, a further and additional value in the sum of nine thousand and fifty-eight $\frac{33}{100}$ dollars.

3. We assess and find the total value of the plaintiff's said property, including its adaptability for boom purposes, as explained in the court's charge, to be the sum of nine thousand three hundred and fifty-eight $\frac{33}{100}$ dollars.

HORACE E. BANON, *Foreman.*

62 (Indorsed:) U. S. circuit court, district of Minnesota. W'm C. Patterson, j'r, vs. The Miss. and Rum River Boom Co. Special verdict. Filed Dec. 15, 1875. H. E. Mann, clerk.

63, 64 United States circuit court for the district of Minnesota. Term minutes. December term, A. D. 1875. December 20, 1875.

WILLIAM C. PATTERSON, J'R,
vs.
THE MISSISSIPPI AND RUM RIVER BOOM COMPANY.

The defendant, by W'm Lochren, esq., presents a motion to set aside

the verdict found by the jury in this cause, and for a new trial, which is supported by argument and opposed by Cha's E. Flandran, esq. Whereupon it is ordered by the court that the said verdict be set aside and a new trial granted, unless the plaintiff consent to reduce the same to the sum of five thousand five hundred dollars.

The plaintiff asks for time to consider the matter, which is granted.

The defendant made a further motion that judgment be not rendered for any greater sum than three hundred dollars, the sum found by the jury to be the value of the land for all purposes but for booming purposes, which motion was denied by the court, and the defendant excepted.

65 Circuit court of the United States, district of Minnesota.

WILLIAM C. PATTERSON, J'R, PLAINTIFF,
vs.
THE MISSISSIPPI AND RUM RIVER BOOM COMpany, defendant.

Whereas the jury in the above-entitled action rendered a verdict therein, assessing the compensation to be paid by the defendant to the plaintiff for the taking of the plaintiff's land involved in said action at the sum of $9,358.33; and the judge who tried said cause, on a motion for a new trial made therein by the said defendant, ordered that a new trial be granted unless the said plaintiff should elect to reduce said ver dict to the sum of $5,500.00: Now, in pursuance of said order, said plaintiff hereby elects to so reduce said verdict, and enter judgment for said sum of $5,500.00 and costs.

Dec. 22, 1875.

BIGELOW, FLANDRAN AND CLARK, AND
R. B. GALUSHA,
Pl'ff's Att'ys.

66 (Indorsed:) U. S. circuit court, dist. of Minnesota. W'm C. Patterson, j'r, vs. The Miss. and Rum River Boom Company. Plaintiff's election to reduce verdict to $5,500. Filed Dec. 22, 1875. H. E. Mann, clerk. Bigelow, Flandran and Clark, and R. B. Galusha, pl'ff's att'ys.

67 Circuit court of the U. S., district of Minnesota.

W'M C. PATTERSON, J'R,
vs.
THE MISSISSIPPI AND RUM RIVER BOOM COMpany.

Pl'ff's costs and disbursements.

Copy of record from State court					$12 85
Witnesses:					
Edward S. Brown,	2 days,	40	miles		5 00
Horatio Holton,	2 "	80	"		7 00
W. W. Hall,	3 "	34	"		6 20
Jonathan Clare,	3 "	20	"		5 50
John Rollins,	2 "	20	"		4 00
Sam'l Stanchfield	2 "	20	"		4 00

Maj. Halo,	2 "	20 "	4 00
Clerk's fees to be taxed			29 20
Docket fee			20 00
Clerk's fees State court			1 00
			$98 75

The above bill of costs is correct and may be taxed.
December 23, 1875.

LOCHREN, MCNAIR AND GILFILLAN,
Att'ys for Defendant.
BIGELOW, FLANDRAN AND CLARK,
Att'ys for Plaintiff.

68 (Indorsed:) U. S. circuit court. dist. of Minnesota. W'm C. Patterson, j'r, vs. The Miss. and Rum River Boom Co. Bill of costs. Bigelow, Flandran and Clark, pl'ff's att'ys.

69 Circuit court of the United States, district of Minnesota.

WILLIAM C. PATTERSON, J'R, PLAINTIFF,
vs.
THE MISSISSIPPI AND RUM RIVER BOOM COMPANY, defendant.

The above-entitled action having been brought on for trial in its regular order on the calendar at the December term of this court held at Saint Paul, in said district, on the 13th day of December, 1875, and the jury in said cause having rendered a verdict therein, wherein and whereby they find that the compensation to be paid by said defendant to said plaintiff for the land taken by said defendant from said plaintiff is the sum of $9,358.33, and on the defendant's motion for a new trial in said action the court ordered that a new trial should be granted unless the plaintiff elected to accept a verdict of $5,500, and said plaintiff having so elected, it is hereby ordered and adjudged by this court that the said plaintiff, William C. Patterson, j'r, do recover of the said defendant, The Mississippi and Rum River Boom Company, the sum of five thousand five hundred dollars, and his costs and disburse-
70 ments by him made and incurred in and about the prosecution of said action, to be taxed, and that he have execution therefor.

Judgment record signed this 23d day of December, 1875.

H. E. MANN, *Clerk.*

71 *Bill of exceptions.*

United States circuit court, district of Minnesota.

WILLIAM C. PATTERSON, J'R, PL'FF,
vs.
THE MISSISSIPPI AND RUM RIVER BOOM COMPANY, def't.

This was an appeal to the district court of the fourth judicial district of the State of Minnesota, for the county of Anoka, from the award of commissioners appointed by said district court to examine and make appraisal and award of the value of certain lands of the plaintiff in said

Anoka County, which the Mississippi and Rum River Boom Company had entered upon and desired to enter upon, occupy, possess, and enjoy for boom purpose as described in the charter of said company, and to fix and assess the compensation and damages to the owners of said land by the said company. The appeal was removed to this court upon the petition of William C. Patterson, jr., the land-owner, and came on for trial at the term of this court begun and holden at S't Paul, in this district, on the 13th day of December, A. D. 1875, before the honorables John F. Dillon and Rensselaer R. Nelson, judges of this court, and for the trial thereof a jury was duly empanneled and sworn.

72 An act of the legislative assembly of the Territory of Minnesota, approved May 21, 1857, entitled "An act to incorporate the Mississippi and Rum River Boom Company," and several acts of the legislature of the State of Minnesota amendatory thereof, approved respectively on the 8th day of March, 1862, the 9th day of March, 1867, and the 6th day of March, 1868, were received in evidence by consent of all parties.

It was admitted that the plaintiff was the owner of the land in question, which is described as follows: Lots five (5) and six (6) in section twenty-seven (27), and lots five (5) and six (6) in section thirty-one (31), all in township thirty-one (31) north of range twenty-four (24) west, and that this land consisted of one island and parts of two other islands in the Mississippi River about fourteen miles above the falls at S't Anthony, and about the same distance below the mouth of Crow River.

The island owned wholly by the appellant is the lower island of the three, and the islands are ranged one above the other in the river with open channels between them of a few rods in width, and the extent in distance from the upper end of the upper island to the lower end of the lower island is about one mile; that the three islands substan-

73 tially divide the river into two channels, the principal channel lying east of these islands, while the channel on the westerly side of the islands is nearly an eighth of a mile in width, and of sufficient depth for floating logs and well adapted for the formation of a boom for holding logs.

It further appeared that the plaintiff's portion of the two islands which were not wholly owned by him included the whole of the westerly shores of those islands excepting about three rods in length near the middle of the westerly shore of the middle island; and that the entire area of the whole of plaintiff's land on the said islands is $34\frac{46}{100}$ acres, and is all included in the proposed taking by said company.

It further appeared that these islands were covered to a considerable extent by a growth of small timber, and that considerable portions of them were liable to overflow in times of high water, and that the Mississippi and Rum River Boom Company had used the channel of said river west of said islands for several years for one of its booms for holding logs, closing the channel at the lower end of the lower island and the side channels between the islands with piers and boom sticks, and that the boom so formed was one of the principal booms of said company and capable of holding logs to the amount of from

74 twenty to thirty million feet at one time, and that the amount of logs which came into the limits of all the booms of said company each season was on the average two hundred million feet, owned by many different persons and intermingled in floating together down said river.

Testimony was also given by the plaintiff tending to show that these

islands in question and the opposite shore constituted the largest and best and safest boom of the company within their chartered limits. It was a conceded fact that the land of the plaintiff was well adapted to boom purposes.

The plaintiff examined six witnesses as to the value of the lands. All of them were acquainted with the land in question and with the boom, and professed to have and stated that they did have a knowledge of the value generally of lands in the vicinity and of the islands in question, but not from any sales of islands similarly situated to those here in question.

The counsel for plaintiff asked of each of said witnesses the following question:

"What is the value of the land of the plaintiff on these islands for any and all purposes, including its adaptability for boom purposes, taking into consideration the fact that it cannot be used by the
75 plaintiff for boom purposes, but also taking into consideration the fact that it is adapted for boom purposes?"

The counsel for defendant objected to this question when propounded to each witness on the alleged grounds that it was incompetent and immaterial, and that the answer to it could not tend to prove the proper compensation to be made to plaintiff, and that it was irrelavant, indefinite, and speculative.

The objection was each time overruled by the court, and to such ruling the defendant, by his counsel, at each time then and there duly excepted, and the exceptions were duly noted.

In answer to this question such witnesses stated the value of said land at sums varying from ten thousand dollars to twenty thousand dollars, excepting one, who stated such value to be fifty thousand dollars. One of these witnesses was related to the plaintiff and interested in the controversy.

On cross-examination five of the said witnesses stated that the value of said land for all other purposes aside from boom purposes did not exceed the sum of ten dollars per acre (from five to ten dollars per acre); the sixth of said witnesses stated its value aside from its adaptability for boom purposes to be fifty dollars per acre.

76 Eight witnesses were examined on behalf of the defendant, most of whom were stockholders or employees of the boom company. All of them were also acquainted with said land and boom, and professed to have and stated that they did have a knowledge of the value of the land, and three of them testified to knowledge of actual sales of land similarly situated, being islands well situated for the construction of booms, and near the islands in question. The testimony of each of such witnesses tended to show that the plaintiff's land was not worth more than ten dollars per acre for any purpose; but two of them were unable to fix a value upon the islands if their adaptability for boom purposes was to be considered as an element of value.

The defendant also introduced evidence tending to show that it had purchased the balance of said three islands except the parts owned by plaintiff about four years ago at the price of ten dollars per acre; also another island called Banfil Island, situated one and one-half miles below plaintiff's land in the same river, containing twenty-seven acres of high, well timbered land, for the price of four hundred dollars, and that it had formed a boom between said Banfil Island and the main shore, capable of holding from seven to eight million feet of logs; also
77 that it had, during the summer of the year 1875, purchased another island in said river situate about five miles above plaint-

iff's land, called Clontier Island, and containing seventy-nine acres of high land, having from one thousand to twelve hundred cords of wood, for the price of fifteen hundred dollars, and that by the construction of two piers only at the lower end of the channel between said Clontier Island and the main shore it had formed a boom capable of holding nine million feet of logs. Also testimony tending to show that the land in question was sold to plaintiff in the year 1873 at the price of five dollars per acre.

Upon the cross-examination of Orlando C. Merriman, a witness for the defendant, who was a stockholder and former treasurer of the defendant, it appeared that the defendant occupied the western shore of the river opposite the plaintiff's land for boom purposes, and that for about one-half the distance on the upper end it occupied the same under a lease for years from one Weaver. The said Weaver was the owner of the land on the main shore opposite the plaintiff's islands.

The counsel for plaintiff then asked the witness the following question: "What rent does the defendant pay Weaver?"

78 The defendant, by its counsel, objected to this question as immaterial and incompetent. The objection was overruled and the defendant excepted to the ruling, and the exception was duly noted.

The witness answered that the rent paid Weaver by the boom company was seven hundred dollars per year.

On re-examination the witness stated that at the time the lease from Weaver was taken the company deemed itself forced to take it at Weaver's terms, which were considered exorbitant, for the reason that the boom was then full of logs, and Weaver had obtained an injunction restraining the company from using the boom, and that the officers of the company believed that unless Weaver's terms were acceded to at once, the boom would be opened clandestinely or by force, and the logs swept over the Falls of St Anthony.

Evidence was introduced tending to show that the defendant was possessed of the shore on the westerly bank of the Mississippi River opposite the land of plaintiff, also that from twenty to thirty piers had been constructed by defendant in forming the boom between said three islands and the said westerly bank of said river, and that the cost of such piers varied from five hundred dollars to one thousand dollars for each pier.

79 The defendant also introduced testimony tending to show that of the vast amount of logs coming down said river belonging to different owners and intermingled, no person or corporation could use a boom at said three islands with any advantage or profit without also owning other booms sufficient to manage the whole and in connection with such franchises as defendant possessed.

The court then charged the jury as follows:

GENTLEMEN OF THE JURY:

1. The only question for you to determine is what is the just and fair value of the land of Patterson which the boom company is seeking to appropriate to its own use. The case is peculiar in some of its features, and this makes the determination of the value of the lands somewhat difficult. The lands in question—thirty-four and $\frac{46}{100}$ acres—comprise all of one island and parts of two other islands in the Mississippi River. The main channel of the river is to the east of these islands, and the space on the west of these islands (about one-eighth of a mile wide) is what is known as a slough, and it is conceded to be well adapted to the making of a boom for logs coming down the river.

The boom company, under its charter, is "authorized, empowered, and required to construct, maintain, and keep in good repair any
80 boom or booms in the Mississippi River at such points as it may deem advisable between the mouth of Crow River and the head of Nicollet Island, above the Falls of S't Anthony; and also any boom or booms on the Rum River, at such points as it may deem necessary, between the mouth of Cedar Creek (so called) and a part not nearer the mouth of said Rum River than the old Rum River boom, so called. And said company is further authorized and required to receive and take entire control and management of all logs and timber which are to be conveyed to any point on the Mississippi River below the mouth of Bassett's Creek, in the county of Hennepin, as follows:

"All logs and other timber coming down Rum River shall be so received at the mouth of Cedar Creek; all logs and other timber coming down the Mississippi River at the mouth of Crow River; and said company shall drive and convey the same to the main boom of said company near the head of Nicollet Island; and it is further authorized and required to collect and assort all logs coming into said main boom, and when requested by the owners thereof, on sufficient notice being given, to turn the same out of said main boom and into the ponds at S't Anthony and Minneapolis, at and opposite to the head of Nicollet
81 Island, or over the Falls of S't Anthony, pursuant to the direction of the committee named in section 15 of this act, and shall, on like request of the owners thereof, assort and raft, with good half-inch rigging, any logs that may be in said boom or booms; which rafts shall be received by the owner at the place of delivery," &c.

2. The boom company in this case proposes to appropriate all the lands of the plaintiff on these three islands, and hence there is no embarrassment arising from the effect of the taking of only part of the land upon the value of the part remaining in the owner.

When all the land of a private owner is taken for a public purpose, as in this case, the owner is entitled to the fair and full pecuniary value of the property at the time it is "entered upon and taken" (Charter, sec. 13) by the boom company, but to no more. This will exclude from consideration, as an element of value, the fact, if such it be, that the owner does not want to sell; but it includes the full value at the time it is taken, no matter what may have caused that value. The owner is entitled not simply to such sum as the property would bring at forced sale, but such sum as the property is worth in the market, that is to per-
82 sons generally, if persons desiring to purchase were found who were willing to pay its just and full value, and he is entitled to no more. (Dillon, Municipal Corp., sec. 487, and cases cited.)

Neither the plaintiff nor any other person, without legislative authority, has the right to sink piers or make a boom in the Mississippi River which would obstruct any part of its navigable surface. Aside from this, the charter of the boom company above referred to gives it the right to establish a boom within the limits fixed in its charter, within which limits lie the lands of the plaintiff. There cannot be two concurrent rights in different persons to make a boom at one and the same place in the river.

It therefore follows that the plaintiff could not himself use his islands for boom purposes, and hence he is not to be allowed, as an element of damages, that he is deprived of the right to use them in this manner.

The right of the boom company to use these islands when acquired, in connection with their other property, for boom purposes, is a franchise conferred upon the company, and upon no one else, by the legisla-

ture; it is not relevant for the jury to allow what the islands when acquired by the company will be made worth to the company by
83 reason of the legislative franchises above mentioned.

While this is so, it is yet true that if these islands are particularly adapted for use for boom purposes, and if this adaptability is an element which creates an additional demand for these islands and confers upon them an additional value, this may and should be considered by you in ascertaining the value of the plaintiff's land.

In this connection, I charge you, in the language of two of the requests submitted by counsel for the defendant, as follows:

"Second. The plaintiff cannot lawfully use this land for boom purposes, neither could any person or corporation to whom he could sell it, aside from the defendant. Its adaptability for boom purposes is therefore not an element of value to him, excepting in the sense that it makes the land desirable for the defendant, and therefore more readily saleable."

"Fourth. The defendant is a public servant, created to subserve a public need, and its franchises are granted for the benefit of the public. The plaintiff, whose land is taken for a public use, must be satisfied with a fair and full compensation for its value to him, and is not entitled to speculate upon the necessities of the public."

84 3. The question of value is one for the jury to determine upon the whole evidence and all the circumstances of the particular case, guided by the rules of law above stated.

It is the universal experience of courts that where any fact depends upon the opinion of witnesses, these opinions are generally found to be variant and conflicting. This case affords a striking illustration of this observation. Witnesses professing to be conversant with the value of such property vary in their estimates of the value of the plaintiff's islands all the way between three hundred dollars and twenty thousand or thirty thousand dollars. Some of those opinions must be wrong and of little value, and all of them may be mistaken opinions.

You must from your own judgment upon all the facts before you (including, of course, for what they are worth the opinions as to the value of various witnesses). It is your judgment that must govern. You may fix upon or adopt, if you think it just, the value heretofore fixed by the commissioners, or a greater or less value.

If there have been sales of these islands, or of other islands similarly situated and adapted to similar uses, or contracts with land-own-
85 ers by the boom company for the use of other lands in the vicinity for boom purposes, these may be resorted to by you, looking at all the circumstances of these sales and contracts, in the determination of the ultimate question of value; and ordinarily actual sales or transactions are better evidence of value than the mere opinions of witnesses as to value, especially when the value concerns a property for which there is not a market value, or known or easily ascertainable general value.

To the following portion of this charge the defendant duly excepted at the time, and its exception was noted:

"It is yet true that if these islands are particularly adapted for use for boom purposes, and if this adaptability is an element which creates an additional demand for these islands and confers upon them an additional value, this may and should be considered by you in ascertaining the value of the plaintiff's land."

The defendant, by its counsel, further asked the court to charge the jury as severally set forth in the following four requests:

"First. The plaintiff, Paterson, is entitled to have the value of the land in question fixed at its worth to him for any lawful use to which he could apply it, or at the price for which it could be sold fairly.
86 But he is not entitled to recover any particular or special value which the land would have to no one but the defendant for use only in connection with defendant's chartered franchises."

The court refused to charge the jury in the language of this first request, and to such refusal the defendant then and there duly excepted, and its exception was noted.

"Third. There is no one in existence except the defendant who can lawfully use the land in question for boom purposes, and the jury have no right to speculate on any supposition that any other person or corporation will ever have such right, or that there will be any competition for the land for this particular use."

The court refused to charge the jury in the language of this third request, and to such refusal the defendant then and there duly excepted, and its exception was noted.

"Fifth. In considering the testimony as to the value of this land, the jury should regard with caution statements of value by witnesses which appear to be merely speculative. A safer criterion to arrive at the true value of the land will be found in the testimony respecting the prices for which this identical land, and other lands on the same islands
87 and other islands adapted to like uses, have recently been sold in bona fide sales."

The court refused to charge the jury in the language of this fifth request, for the alleged reason that the said request was covered by the previous charge of the court, and to such refusal the defendant then and there duly excepted, and its exception was noted.

"Sixth. As the defendant has the right to take this land for a public use upon compensation to the owner, its adaptability to uses to which the defendant can alone apply it, cannot largely increase its value to the owner, and the jury have no right to increase their finding as to its value largely on this account. They would not, for example, be entitled to double the value of the lands on account of this consideration alone."

The court refused to charge the jury in the language of this sixth request, and to such refusal the defendant then and there duly excepted, and its exception was noted.

The court further directed the jury in addition to their general verdict to make a special finding, first, of the value of the lands in question, aside from any consideration of its value for boom purposes;
88 second, any further or additional value it may have in view of its adaptability for boom purposes; and, third, the total value of the lands including its adaptability for boom purposes as explained in the court's charge.

The jury thereupon retired to consider of their verdict, and upon returning rendered a general verdict assessing the value of the lands and amount of compensation to be paid therefor at the sum of nine thousand three hundred and fifty-eight dollars and thirty-three cents, which general verdict was accompanied by the special finding of the jury, in which they assessed the value of the lands in question aside from any consideration of its value for boom purposes, at the sum of three hundred dollars, and assessed and fixed upon it in view of its adaptability for boom purposes, a further and additional value in the sum of nine thousand and fifty-eight dollars and thirty-three cents, and assessed the total value of the land, including its adaptability for boom purposes, at the

sum of nine thousand three hundred and fifty-eight dollars and thirty-three cents, as in the general verdict.

Said special finding is as follows:

89 U. S. circuit court, district of Minnesota.

WILLIAM C. PATTERSON, J'R,
vs.
THE MISSISSIPPI AND RUM RIVER BOOM COMPANY. } Special finding.

1. We, the jury in the above entitled action, assess the value of the land in question, aside from any consideration of its value for boom purposes, at the sum of three hundred dollars.

2. We assess and fix upon it in view of its adaptability for boom purposes a further and additional value in the sum of nine thousand and fifty-eight $\frac{33}{100}$ dollars.

3. We assess and find the total value of the plaintiff's said property, including its adaptability for boom purposes, as explained in the court's charge, to be the sum of nine thousand three hundred and fifty-eight $\frac{33}{100}$ dollars.

HORACE E. BANON, *Foreman.*

And because the aforesaid matters (excepting said general verdict and special findings) do not appear of record, the foregoing bill of exceptions, having been examined and found by the court to be con-
90 formable to the facts, is hereby allowed. Signed and sealed by me, the presiding judge, before whom the said trial was had.

Done at the said December term of said circuit court.

JOHN F. DILLON.

(Indorsed:) U. S. circuit court, district of Minnesota. William C. Patterson, j'r, vs. The Mississippi and Rum River Boom Company. Bill of exceptions. Filed Dec. 17, 1875. H. E. Mann, clerk.

91 Know all men by these presents, that we, Samuel H. Chute Orlando C. Merriam, and James A. Lovejoy, all of the city of Minneapolis, in the county of Hennepin, in the State of Minnesota, are held and firmly bound unto William C. Patterson, j'r, in the full and just sum of fifteen thousand dollars, to be paid to the said William C. Patterson, j'r, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this 27th day of December, in the year of our Lord one thousand eight hundred and seventy-five.

Whereas lately at a general term of the circuit court of the United States for the district of Minnesota, begun and holden at the city of Saint Paul, in said district, on Monday the thirteenth day of December, A. D. 1875, and upon the 23d day of December, A. D. 1875, in said term, in a suit depending in said court between the aforesaid William C. Patterson, j'r, plaintiff, and The Mississippi and Rum River Boom Company, defendant, judgment was rendered against the said The Mississippi and Rum River Boom Company, defendant, and the said The
92 Mississippi and Rum River Boom Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said court, and a citation directed to the said William C. Patterson, j'r,

citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now the condition of the above obligation is such that if the said The Mississippi and Rum River Boom Company shall prosecute said writ of error to effect and answer all damages and costs if it shall fail to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

SAMMEL H. CHUTE. [SEAL.]
ORLANDO C. MERRIAM. [SEAL.]
JAMES A. LOVEJOY. [SEAL.]

Sealed and delivered in presence of—
E. ORTMAN.
W'M LOCHREN.

STATE OF MINNESOTA,
County of Hennepin, ss:

Be it known that on this twenty-seventh day of December, A. D. 1875, before me personally came Samuel H. Chute, Orlando C. Merriam, and James A. Lovejoy, who being severally duly sworn, each for himself doth say that he is one of the persons named in and who executed the foregoing obligation, that he is a resident of and freeholder in the State of Minnesota, and is worth the sum of fifteen thousand dollars over and above all debts and liabilities, and exclusive of property which is exempt from execution.

93

ORLANEO C. MERRIAM.
SAMUEL H. CHUTE.
JAMES A. LOVEJOY.

Subscribed and sworn to before me this 27th day of December, A. D. 1875.

[NOTARIAL SEAL.]

E. ORTMAN,
Notary Public, Minnesota.

Approved 27th December, 1875.

JOHN F. DILLON,
Circuit Judge.

94 (Indorsed:) U. S. circuit court, dist. of Minnesota. W'm C. Patterson, j'r, vs. The Mississippi and Rum River and Boom Company. Bond on writ of error. Filed Dec. 27th, 1875. H. E. Mann, clerk.

95 UNITED STATES OF AMERICA,
District of Minnesota, ss:

I, Horatio E. Mann, clerk of the circuit court of the United States of America for the district of Minnesota, do hereby certify that the foregoing pages, numbered from one to ninety-four inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of William C. Patterson, j'r, plaintiff, vs. The Mississippi and Rum River Boom Company, defendant, as the same remain of record and on file in my office, and of the whole thereof.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Saint Paul, in the district of Minnesota, this twenty-fourth day of April, in the year of our Lord one thousand

eight hundred and seventy-six, and of our Independence the one hundredth year.

[SEAL.] HORATIO E. MANN, *Clerk.*

(Indorsement on cover:) No. 113. The Mississippi and Rum River Boom Company, plaintiff in error, vs. William C. Patterson, j'r Minnesota C. C. U. S. Filed 28th April, 1876.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1878.

No. 113.

THE MISSISSIPPI AND RUM RIVER BOOM COMPANY,
Plaintiff in Error,

vs.

WILLIAM C. PATTERSON, JR., *Defendant in Error.*

In Error to the Circuit Court of the United States for the District of Minnesota.

BRIEF OF PLAINTIFF IN ERROR.

WM. LOCHREN,
Counsel for Plaintiff in Error.

Johnson, Smith & Harrison, Printers, Minneapolis.

UNITED STATES OF AMERICA,
SUPREME COURT.

THE MISSISSIPPI AND RUM RIVER BOOM COMPANY,
Plaintiff in Error.

vs.

WILLIAM C. PATTERSON, Defendant in Error.

BRIEF OF PLAINTIFF IN ERROR.

STATEMENT OF CASE.

This was a proceeding taken by the Mississippi and Rum River Boom Company, a corporation of the State of Minnesota, under and pursuant to Section Thirteen (13) of its charter (hereinafter quoted), to acquire title, for boom purposes, to an island and parts of two other islands, in the Mississippi river, within the boom limits of said company,—see its charter, Sec. 10, and *Record, page 22, fol. 72,*— by condemnation, in the exercise of the power of eminent domain, for the public use declared in its charter.

The record, here, sets forth the notice by the company of its purpose to apply to the Judge of the State District Court, for the appointment of commissioners to make appraisal and award of the value of the lands to be taken, *fols. 5, 6;* the proof of publication thereof, *fol. 7;* the application or petition to the judge, *fols. 8 to 15;* the order of the court thereon appointing the commissioners, and

which shows that all parties appeared at the hearing, *fols. 18 to 21;* a memorandum by the judge of the proceedings and exceptions taken before him at the same time, *fols. 21, 22;* the oath of the commissioners, *fols. 24 to 26;* and the report, appraisal and award of the commissioners, *fols. 35 to 40.*

The printed record is defective in failing to set forth the notice published by the commissioners of their meeting. It contains the affidavit of the printer, at *fol. 35,* of the publication of the notice, but not the notice so published, which was attached to the affidavit and referred to therein. But the *fact* of the publication of such notice is admitted in the stipulation of the attorneys, at *folio 33* of the record.

Both parties appealed from the award, to the District Court of the State, for the county of Anoka: *folios 41 to 46,* and thereupon William C. Patterson, Jr., the land owner, filed his petition and bond, *folios 47 to 53,* to remove his appeal to the Circuit Court of the United States for the District of Minnesta, on the ground that he was a resident citizen of Illinois. The record was certified to the Circuit Court, and the matter came on for hearing before the court and a jury at the December term, 1875.

The only question litigated was the amount of compensation which should be paid to the land owner, for the land taken. A verdict was rendered assessing the value of the land at nine thousand three hundred and fifty-eight dollars and thirty-three cents; accompanied by a special verdict which assessed the value of the land, aside from any consideration of its value for boom purposes, at three hundred dollars, and fixing upon it in view of its adaptability for boom purposes a further and additional value of nine thousand and fifty-eight dollars and thirty-three cents: *folios 59 to 62.*

The defendant, the boom company, moved to set aside the verdict and for a new trial, but the court gave the plaintiff the option to reduce the verdict to five thousand five hundred dollars, which was acceded to, and the motion denied: *folios 64, 65.*

The defendant also moved the court that no judgment be rendered on the verdict for a greater sum than three hundred dollars, the sum found by the jury to be the value of the land for all purposes except boom purposes, which motion was denied, and the defendant excepted. *Record, page 20, folio 64.*

Exceptions to the admission of evidence, and to the charges and refusals to charge of the court, appear in the bill of exceptions, *Record, fols. 71 to 90*, and are referred to in the assignment of errors herein.

The case presented this question: Whether the land owner was entitled to have as compensation for his land taken for public use, not only its value for all uses to which he or any other person could apply it, but also its value for the *public use*, to which neither he nor any other person, except the defendant who held the exclusive franchise of this public use, as a *quasi* public corporation, could apply it.

And the preliminary question: Whether the Circuit Court could take jurisdiction of the matter.

ASSIGNMENT OF ERRORS.

1. The Circuit Court erred in assuming jurisdiction of the matter.

2. The Circuit Court erred in overruling the defendant's objections to the question asked of plaintiff's witnesses: "What is the value of the land of the plaintiff on these islands for any and all purposes, including its adaptability for boom purposes, taking into consideration the fact that it can not be used by the plaintiff for boom purposes, but also taking into consideration the fact that it is adapted for boom purposes?" *Record, page 23, fols. 74, 75.*

3. The Circuit Court erred in overruling the objections of defendant to the question of plaintiff to the witness Merriman: "What rent does the defendant pay Weaver?" *Record, page 24, fol. 77.*

4. The Circuit Court erred in charging the jury as follows: "It is yet true that if these islands are particularly adapted for use for boom purposes, and if this adaptability is an element which creates an additional demand for these islands, and confers upon them an additional value, this may and should be considered by you in ascertaining the value of the plaintiffs' land." *Record, p. 26, folio 83.*

5. The Circuit Court erred in refusing to charge the defendant's first request: "The plaintiff, Patterson, is entitled to have the value of the land in question fixed at its worth to him for any lawful use to which he could apply it, or at the price for which it could be sold fairly. But he is not entitled to recover any particular or spe-

cial value which the land would have to no one but the defendant, for use only in connection with defendant's chartered franchises." *Record, p. 27, folios 85, 86.*

6. The Circuit Court erred in refusing to charge the defendant's third request: "There is no one in existence except the defendant who can lawfully use the lands in question for boom purposes; and the jury have no right to speculate on any supposition that any other person or corporation will ever have such right, or that there will be any competition for the land for this particular use." *Rec. p. 27, fol. 86.*

7. The Circuit Court erred in refusing to charge the defendant's fifth request: "In considering the testimony as to the value of the land the jury should regard with caution statements of value by witnesses which appear to be merely speculative. A safer criterion to arrive at the true value of the land will be found in the testimony respecting the prices for which this identical land and other lands adapted to like uses have recently been sold in *bona fide* sales." *Record, p. 27, folios 86, 87.*

8. The Circuit Court erred in refusing to charge the defendant's sixth request: "As the defendant has the right to take this land for a public use, upon compensation to the owner, its adaptability to uses to which the defendant can alone apply it, can not largely increase its value to the owner, and the jury have no right to increase their finding as to its value largely on this account. They would not, for example, be entitled to double the value of the lands on account of this consideration alone." *Record, p. 27, f. 87.*

9. The Circuit Court erred in refusing to grant defendants' motion for a new trial. *Record, pp. 19, 20, fols. 64, 66.*

10. The Circuit Court erred in refusing to grant defendant's motion, that no judgment for a greater sum than three hundred dollars be rendered upon the verdict and special finding. *Record, p. 20, f. 64.*

POINTS OF LAW AND FACT.

To properly present the case, it will be necessary to quote some portions of the charter of the Plaintiff in Error, which we do, as follows; premising that the original act was entitled, "An Act to incorporate the Mississippi and Rum River Boom Company," passed by the Legislative Assembly of the Territory of Minnesota, May 21, 1857. *Laws of Extra Session, 1857, Chap. 60, p. 233.*

SECTION 1. That James A. Lovejoy, John L. Lovejoy, J. G. Brockway, D. M. Hall, G. W. Buckmore, Jonathan Chase, Samuel A. Jewett, O. Rogers, Chas. F. Stinson, H. M. Kent, Alexis Cloutier, Robert Wyman, D. W. Marr, J. B. Bassett, George Ellsworth, J. S. Pomeroy, E. N. Bates, A. Walcott, George D. Walcott, John M. Walcott, J. N. Woodman, C. D. Dorr, George E. H. Day, James McCann, Oliver Ames, S. B. Olmstead, St. Anthony Falls Water Power Company, H. S. Plumer, D. S. Balch, Thomas Hanson, D. Stewart, E. D. Cobb, L. D. Stewart, R. P. Russell, W. Hanson, G. Hanson, and their associates, successors and assigns, be and they are hereby constituted a body corporate, by the name of the Mississippi and Rum River Boom Company, and by that name may sue and be sued, prosecute and defend in all the courts in this Territory, and enjoy all the rights and immunities incident to corporations, not contrary to the laws of the United States or of this Territory, and may have a common seal and alter the same at pleasure. *(As amended by Special Laws, 1867, p. 363, Sec. 17.*

SEC. 10. The Mississippi and Rum River Boom Company is hereby authorized, empowered and required to construct, maintain and keep in good repair any boom or booms on the Mississippi river at such points as they may deem advisable, between the mouth of Crow river and the head of Nicollet Island, above the falls of St. Anthony, and also any boom or booms on the Rum river at such points as they may deem necessary, between the mouth of Cedar creek, so called, and a point not nearer the mouth of said Rum river than the old Rum river boom, so called; and said company is further authorized and required to receive and take the entire control and management of all logs and timber which are to be conveyed to any point on the Mississippi river, below the mouth of Bassett's creek in the county of Hennepin, as follows, to wit: All logs and other timber coming down Rum river shall be so received at the mouth of Cedar creek. All logs and other timber coming down the Mississippi river, at the mouth of Crow river; and said company shall drive and convey the same to the main boom of said company near the head of Nicollet Island, and is further authorized and required to collect and assort all logs coming into said main boom, and when requested by the owners thereof, on sufficient notice being given, to turn the same out of said main boom, and into the ponds at St. Anthony and Minneapolis, at and opposite the head of Nicollet Island, or over the Falls of St. Anthony pursuant to the direction of the committee named in section fifteen of this act; and shall on like request of the owners thereof assort and raft with good half inch rigging any logs that may be in said boom or booms, which rafts shall be received by the owners at the place of rafting when ready for delivery; *Provided, however*, That when the water may become so low in said river that logs cannot be turned out of said main boom or rafted in consequence of the low stage of water, the said corporation shall not be held accountable for the delivery of any logs that may at such time be in said main boom, until there shall be sufficient water to raft or turn out the same; *Provided, also*, That said company shall not be liable for any damage caused by any extraordinary rise of water or freshets. *(As amended by Special Laws, 1868, p. 417.)*

SEC. 13. The said corporation shall have the right to enter upon and occupy any land that may be necessary for properly conducting its business as herein authorized and required. And the said corporation may apply to the District Court of the county in which such lands lie, in session, or to the judge thereof in vacation, for the appointment of three commissioners to make an appraisal and

award of the value of any and all lands, which are the private property of any person which shall be designated in such application and which said corporation shall have entered upon, possessed, occupied or used, or which it may thereafter enter upon, take, possess, occupy or use, for any of the purposes for which by this act the said corporation is authorized to enter upon, take, possess, occupy or use lands. Said corporation shall give notice of its intention to apply for the appointment of such commissioners by publishing the same at least ten days before the time for hearing such application, in at least one newspaper published in the county in which such land lies; but in case no newspaper be published in such county, then in a newspaper published in the county of Hennepin aforesaid; and upon an affidavit of publication of the same, the court or judge to whom the application shall be made shall appoint three commissioners who shall have cognizance of all cases arising within the limits herein before mentioned, within which said company is authorized to construct and maintain its booms, which shall be designated by said company in such application, and they shall proceed to examine the premises in each case separately, having first given such notice as they may deem reasonable to such owner, guardian, or husband, and at least five days personal notice to such owners, if resident in the county; and whenever it shall appear to said company, or its officers that the title of such land is in dispute, or that several parties claim interest therein on account of tax sales, incumbrances of any kind, or otherwise, the said commissioners shall, upon request of said company, give notice to all persons claiming any interest in such land, whether as owners, incumbrancers, or otherwise; and when the person to be notified has no known residence in this State within the knowledge of such commissioners, the notice may be by publication in a newspaper for such length of time as the commissioners shall deem reasonable; and after making such examination, said commissioners, or a majority of them, in each case separately, shall make an appraisement and award of the value of the land so entered upon, taken, possessed, occupied, or used by said company for any of the purposes aforesaid, at the time when the same was entered upon and taken, and shall deliver one copy of their award in each case to said company, and shall file the other in the office of the clerk of the district court of the county in which such land shall lie, with the costs of the award taxed upon each of said copies; and if neither shall appeal from the said award in the manner hereafter provided, the said district court on motion of the party in whose favor any award shall be made, for such value as aforesaid, unless such award shall have been previously paid, shall enter up judgment in conformity with such award, and in case either of said commissioners shall die, resign, or decline to act, said court or judge shall appoint another in his stead; and the said company, or any party receiving notice from said commissioners as aforesaid, may, within thirty days after such award shall have been filed with the clerk aforesaid, appeal from the same to said district court by filing with the clerk thereof a written notice of such appeal; and upon receiving such notice the said clerk shall enter the appeal as a case upon the docket of said court, setting down the owner or owners, and person or persons claiming any interest in said land, embracing all persons so having received such notice from the said commissioners as plaintiff, and the said company as defendant; and the said court shall proceed to hear and determine such case, in the same manner that other cases are heard and determined in such court; and all issues of fact arising therein shall be tried by a jury, unless a jury

be expressly waived by both parties; but the appellant shall not be entitled to have the case tried at any term of the said court unless he shall have given notice to the appellee, or his attorney, at least ten days before the first day of the term that he will demand a trial at such term; but in case the appellee has no known residence in this state, or attorney of record residing therein, no such notice need be given; but in all cases the appellee may waive such notice, in which case the same rule for trial shall apply to it as to other cases in said court.

After the hearing of such case, the jury, or if a jury trial be waived, the court shall assess the value of the land so entered upon, taken, possessed, occupied and used by said company at the time when the same was entered upon and taken; and after such assessment the court shall proceed to render judgment against said company for the amount of said assessment in favor of the plaintiff or plaintiffs in such case; and if the amount so assessed in favor of said plaintiff shall exceed the amount awarded by said commissioners with interest at the rate of seven per cent per annum from the time of such award to the time of such assessment by the jury or court, then judgment shall be rendered against said company for costs; and when the appeal shall be taken by the claimant, and it shall not exceed such an amount and interest as aforesaid, then judgment shall be rendered in favor of said company for costs; and against the plaintiff or plaintiffs, and execution may issue accordingly.

Either party shall be entitled to a change of venue for the trial of such cause as in other cases pending in said court.

The judgment of said court may be reviewed on writ of error, as other cases at law. Whenever the commissioners shall make an award as aforesaid, and no appeal shall be taken from the same, or whenever in case of appeal a final judgment shall be rendered it shall be the duty of the company, and not before, to pay to the party entitled to the same the amount of said award or judgment; and in any case where there shall be any lien, incumbrance, tax sale, tax title, or equitable claim to or upon the land, or any part thereof which is the subject matter of such award or judgment, or when more than one person shall be entitled to, or shall set up any claim to such award or judgment, on any part of it, or when the person entitled to receive the same shall not have any known residence in this state, the said company may deposit the amount of such award, where there is no appeal, with the clerk of the court with whom the award in the case shall have been filed; and in case of an appeal and judgment thereon, the company may deposit the amount of such judgment with the clerk of the court in which such judgment shall have been rendered; and the money so deposited, in either case, shall be paid over by the order of the court to the person or persons who shall be adjudged by the court to be entitled to receive the same; and whenever the amount of such award or judgment shall have been paid, or tendered, or deposited as aforesaid, an absolute estate in fee simple in such lands, shall be and become vested in the said company, as against all persons so receiving notice from the said commissioners as aforesaid, and all such persons shall be forever barred and excluded from questioning such title so acquired by said company, and the said company shall have full power and authority after entering upon and taking any such lands, to have, hold, possess, occupy, use and enjoy the same for any of the lawful purposes of said company, from the time of such entry, until the proceedings contemplated by this act shall have been finally determined, and

until said company shall have refused, after demand made, to pay the value thereof, so ascertained as aforesaid.

And it shall not during such time, nor until such refusal be disturbed in such possession, occupancy, use, or enjoyment by any proceedings either in law or equity: Provided, that such rights shall not accrue upon Rum river. *(As amended, Special Laws 1867, p. 359.)*

SEC. 15. The lumbermen of the second surveyor district, who may have cut logs in or above said district during the previous winter to the amount of one million feet, and who may meet at the Surveyor General's office in said district at ten o'clock on the first Tuesday of April in each year shall choose a committee of three persons who shall for the ensuing season, direct in relation to the driving of said logs and timber, and determine the times of turning out the same from the booms of said company. In voting for said committe each lumberman shall be entitled to one vote for each million feet of logs so cut by or for him. After said election shall be certified in writing to said company by the president and secretary of such meeting, said company shall during the ensuing season, drive and turn out logs from said booms at such times as said committee shall in writing direct. *(Special Laws 1867, p. 363.)*

SEC. 18. The legislature reserves the right to regulate the tolls or charges for boomage and driving of logs or other timber under this act after three years. *(Special Laws 1867, p. 364.)*

SEC. 21. This act is hereby declared to be a public act, and to take effect from and after its passage. *(Special Laws 1867, p. 364.)*

We have quoted all that the charter contains relative to the exercise of the power of eminent domain, and other sections to show the public charter of the corporation; and the exclusive nature of its powers and rights within the limits assigned to it.

The propriety and even necessity of forming such a corporation with such exclusive powers is evident upon two considerations.

1. To induce th aggregation of such an amount of capital as is required to construct and maintain booms for such an immense amount of logs as have to be secured and handled at this place every season.

2. As a police regulation: to prevent the selfishness of any one person who may have a small quantity of logs in the vast mass, setting all the rest adrift at any time to get at and handle his own.

I.

The Circuit Court had no jurisdiction of the matter.

The whole proceeding for the taking of private property for a public use, was an exercise by the State of Minnesota of its sovereign power of eminent domain, and with this exercise of sovereign power, in all its details, the United States—a separate sovereignty—had no right to interfere, by any of its departments, executive, legislative, or judicial.

The power of eminent domain, by which any or all of the wealth and property of a state may be taken for public use, is inseparable from every sovereignty.

Vattel, Law of Nations, Book I. §244.

It is a *political* power; so much so, that when the *use* is public, the exercise of the power belongs exclusively to the legislative department, and the judiciary can not inquire into the question of the necessity or expediency of its exercise.

Chicago &c. R. R. vs. Town of Lake. 71 Ill. 333;
Secombe vs. Railroad Co., 23 Wall 108;
Matter of Fowler, 53 N. Y. 60;
People vs. Smith, 21 N. Y. 595.
Weir vs. St. P. S. & T. F. R. R. 18 Minn. 155.
Langford vs. Com'rs of Ramsey Co. 16 Minn. 375;
Cooley's Constitutional Limitations, 538.

And the taking of private property by this corporation for boom purposes, has been adjudged by the Supreme Court of the State of Minnesota to be a taking for a public use.

Cotton vs. The Miss. & Rum River. Boom Co. 22 Minn. 372.

In the case of *Trombley vs. Humphrey, 23 Mich. 471*, the Supreme Court of Michigan held, that in the exercise of such a sovereign power as that of eminent domain, the State and the United States are as distinct and separate from each other as foreign governments, and that neither had the right to enter the sphere of the other, or

employ its officers or machinery for the other, in the exercise of this sovereign power. And this case is cited with approval by this court and the same doctrine enunciated in *Kohl et al. vs. United States 1. Otto, 367, 373.* In the case last cited, at page 374, this court uses the following language: "If the United States have the power, it "must be complete in itself. It can neither be enlarged nor diminished by a State. Nor can any State prescribe the manner in "which it must be exercised."

The truth of this is manifest, and the converse of it must be equally true, that the power in each State is "complete in itself," and can neither be enlarged nor diminished by the general government: nor can the latter prescribe the *manner* in which it must be exercised. In short, neither the State nor the general government can rightfully *interfere* in any way with the exercise of this sovereign power by the other.

See also

Darlington vs. U. S. 82 Penn. St. 382.

The ascertainment of the amount of compensation to be paid in any case, is a *proceeding* in the exercise of the power. The right to compensation rests only upon the constitution of the State. *(Sedg. Con. and Stat. Law, 500).* It is not necessary that a jury should fix the compensation; it may be done by a commission, or other impartial body, to be appointed as the legislature may direct.

Beekman vs. Saratoga &c. R. R. 3 Paige, 45, 75;
Cooley's Cons. Lim. 563;
Petition of Mt. Washington Co. 35 N. H. 134;
Dillon Mun. Corp. Secs. 472, 482, and cases cited;
Ames vs. L. S. & M. R. R. 21 Minn. 241, 293.

In the case at bar, the legislature provided that the compensation should in the first instance be awarded by commissioners, and if either party were dissatisfied it provided for a rehearing upon the question of the amount of compensation, before a jury in the District Court of the county in which the land was situate. The only scope of the appeal was to secure a retrial of the matter submitted to the commissioners.

Rippe vs. Chic. Dub. & Minn. R. R. 20 Minn. 187;
Warren vs. 1st Div. St. P. & P. R. R. 18 Minn. 384.
Turner vs. Halloran, 11 Minn, 253.

Here the legislature has fixed the tribunal which shall award the amount of compensation, viz: Commissioners in the first instance, and then, at the option of either party, a rehearing before a jury in the District Court of the county where the land is situate. We submit that Congress has no power to step in here and seize hold of this proceeding, and carry this question for decision to a tribunal which the State legislature has not designated; and that the judicial branch of the federal government has no more right than any other branch of that government to interfere with such a proceeding.

Although the legislature, as a matter of form, and for convenience, has chosen to clothe the proceedings in the district court with the *form* of a suit or action at law, wherein the land owner who is perhaps against his will a party to these proceedings which are taken *in invitum* against him, is made to assume the name of plaintiff, it is not a suit at law in any ordinary sense; but is still in fact an *inquest* to determine the value of the property—*21 Wall. 204.* And it ought not to be regarded as a suit or action within the meaning or scope of the acts of Congress respecting the removal of actions; where the effect would be to cause one sovereignty to trench, however lightly, on the powers or prerogatives of another.

The object of the acts of Congress, touching the removal of causes into the federal courts, was only to reach ordinary civil actions, and such others as are specially named, and not to interfere in proceedings like this. "A thing which is within the letter of a statute is not within the statute unless it be within the intention of the makers."

Jackson vs. Collins 3, Cow. 89, 96.
People vs. Utica Ins. Co. 15, John. 358, 380.
Harrison vs. Vose 9, How. 372.
The King vs. Younger 5, T. R. 449.
Margate Pier Co. vs. Hannani, 3, B. & A. 266.
Edwards vs. Deck, 4, B. & A. 212.

The exercise of the power of eminent domain is primarily and mediately the act of the State; and corporations to which it is dele-

gated and by which it is immediately exercised are but the instrumentalities of the State.

Hatch vs. Cincinnati, &c., R. R., 18 Ohio St. 92.

It may be true that when the legislative department of the government has clearly authorized an executive officer to take private property for a public use under the power of an eminent domain, and *has failed to provide the manner in which this shall be done*, that officer may apply to the courts to aid him in carrying his powers into effect, upon the general principle that the courts will always furnish the remedies and instrumentalities for enforcing and giving effect to a clear right. And in such a case where such officer is so obliged to apply to the courts to furnish everything to give effect to his powers he can only apply by a suit or action in the court. This, as we understand it, is the purport of the decision in *Kohl vs. The United States, 1, Otto 367*, which is the only case we have found which has gone so far as to hold that courts will supply the omission of the legislature, by furnishing a procedure to enforce such power. But even in such case, where the court acts from its own inherent powers, the action or proceeding must be regarded as an act of the sovereignty, through its judiciary; and as such differing from other actions, so that if done by a State court it should not be regarded as within the acts of Congress relating to the removal of actions.

Let us suppose a case exactly parallel to Kohl vs. the United States, to arise in a State court: That a State Legislature should empower one of its executive officers to obtain by condemnation under the power of eminent domain a site for a public building and make no provision whatever as to the procedure to be taken. Under the law as laid out in Kohl's case the officer could commence an action in the State court of general jurisdiction, to carry this power into effect. If the acts of Congress relative to the removal of actions could apply to such a case, and the land owner chanced to reside in another State, he could, at the commencement of the action remove the case to the U. S. Circuit Court, *which would then have to furnish from its inherent powers the machinery to enforce a sovereign power of another sovereignty.* No such power is inherent in the Circuit Courts; and no act of Congress has attempted to, or could vest it with such power.

II.

Most of the remaining errors assigned arise upon exceptions to the charge of the court, and its refusals to charge, in respect to the rules to be regarded by the jury in estimating the value of the land of the plaintiff taken, and the amount of compensation to be paid him therefor, and may be considered together.

The rule contended for by the plaintiff in error is set forth in its fifth request, which was refused by the court and exception taken :

"The plaintiff, Patterson, is entitled to have the value of the land in question fixed at its worth to him for any lawful use to which he could apply it, or at the price for which it could be sold fairly. But he is not entitled to recover any particular or special value which the land would have to no one but the defendant, for use only in connection with defendants' chartered franchises." *Record, p. 27, fols. 25, 26.*

The rule given the jury by the court in its charge, which was also excepted to, was broader : "It is yet true that if these islands are particularly adapted for use for boom purposes, and if this adaptability is an element which creates an additional demand for these islands, and confers upon them an additional value, this may and should be considered by you in ascertaining the value of the plaintiffs land." *Record, p. 26, fol. 83.*

In considering the proper rule of valuation, there are facts and circumstances, about which there was no dispute, or which were settled by the court, which deserve attention.

1. The lands proposed to be taken were an island and parts of two other islands in the Mississippi river within the boom limits of the plaintiff in error. *Record, p. 22, fol. 72, and p. 24, fol. 79.*

2. *All* the land of Patterson was taken ; so that there was no question of damages to remaining land.

3. The Mississippi river is a navigable stream, and the land owner had no right to sink piers or make booms in it. *Record, p. 25, fol. 82. Atlee vs. Packet Co. 21, Wall. 389.*

4. The plaintiff in error had the exclusive right, under its charter, to construct and maintain booms at this place. *Record, p. 25, fol. 82. Charter of Boom Company, Sec. 10, ante.*

It follows, that the right to use these islands in connection with the river for boom purpose *is a franchise*, granted by the legislature to the boom company for a public purpose, and with which the land owner had nothing to do. And so the court held. *Record, pp. 25, 26, fol. 82.*

But the court immediately followed this by the instruction that the jury were to take into consideration the adaptability of the land for boom purposes as an element in determining its value to the plaintiff.

Now the fallacy of this is, that it tended to lead the jury to attach to the *land* a value which belonged alone to the *franchise*. The adaptability of the land to booming purposes was of no value to the owner, nor to any one to whom he could make sale. It could not therefore affect the market value—the true criterion—because no purchaser could put it to that use. The *use* pertains to the *franchise* and not to the land.

In *Virginia, &c., R. R. Co. vs. Elliott* 5, *Nev.* 358, the court held that while everything which actually enhances the present worth of the land should be considered, the fact that the land is necessary or indispensable for the public purpose for which it is claimed, cannot be considered.

And in the case at bar, the court charged the fourth request of defendant, that: "The defendant is a public servant created to subserve a public need, and its franchises are granted for the benefit of the public. The plaintiff, whose land is taken for a public use, must be satisfied with a fair and full compensation for its value to him, and is not entitled to speculate upon the necessities of the public." *Record p. 26, fol. 83.*

But the charge excepted to, instructing the jury that if the adaptability of the land for booming purposes was an element creating an additional demand for these islands and conferring upon them an additional value, this should be considered in ascertaining the value of plaintiff's land, was a direction to them to speculate on the necessities of the public. It was a public use on a public river; only permissable under a public franchise, and to consider the demand that might exist for the land for that purpose was to speculate upon the actual or probable necessities of the public.

That the jury so understood and were misled by the charge excepted to is manifest from their verdict and special finding, wherein

they find that this land, except for this public use alone, was worth but *three hundred dollars*, and fixed upon it with reference to this *public use alone* a further value of *nine thousand and fifty-eight and 33-100 dollars*. This was speculating upon the public necessities to some purpose, in awarding to the plaintiff something more than *thirty-one times* what the same jury found the land to be worth.

Suppose a high, rocky or sterile piece of ground at the outward entrance of a harbor used for pasturage and nearly worthless for that, is needed by the General Government for a fortification. It may command the entrance to a great city, or river, better than any other point, and its importance to the Government may not be measured by millions of dollars. It is worthless to the owner for any such purpose; and if the Government desires it, and takes it under its power of eminent domain, can its adaptability to such purpose be considered any element of value to the owner? If so is it not permitting him to speculate on the necessities of the public, or the Government?

But the government has the superior right to take the land, on making compensation to the owner. And he is compensated when he is paid what it is worth to him, or its fair market price.

Virginia, &c., R. R. vs. Elliott, 5, Nev. 358, 366.

The question which was ruled out in the case last cited was precisely the same in effect as the question which was allowed in this case, against the exception of defendant. *Record, p. 23, fols. 74, 75.*

The court should have charged defendants' third and sixth requests. *Record, p. 27, fols. 86, 87.*

III.

The court should have granted defendants' motion that judgment be not rendered upon the verdict and special findings for a greater sum than three hundred dollars, found to be the value of the lands, aside from booming purposes.

As its value or adaptability for booming purposes was unavailable to the plaintiff or to any one except the public, or one holding the public franchise, the plaintiff could claim no compensation on that ground and the payment to him of three hundred dollars would be a full compensation upon that finding.

Rule 6 of the Circuit Court rules of the District of Minnesota is as follows: "In actions at law, the practice and pleadings, as they existed under and were prescribed by the General Statutes of the State of Minnesota which took effect and went into operation on and after the 31st day of July, 1866, in and for the district courts of said State, be and the same are hereby adopted in this court, except so far as the same may be contrary to the constitution and laws of the United States, and except also that all original and final process shall be issued by the clerk of this court, under the seal thereof and be executed by the marshal as heretofore; and except further that the time within which a party shall be required to answer, demur, or reply, shall be twenty instead of thirty days."

Section 219, of chapter 66, of the statutes referred to in the foregoing rule, Gen. Stat. 1866, p. 480, is as follows: "Sec. 219. Where a special finding of facts is inconsistent with the general verdict, the former controls the latter and the court shall give judgment accordingly."

The special finding was in accordance with the practice of the court, and controlled the general verdict, and judgment should have followed the special finding.

Leese vs. Clark 20, Cal. 387.

IV.

But if the judgment should not have been for three hundred dollars only, a new trial should be granted on account of the errors above referred to, and the fact that the verdict, even as reduced, is still exorbitantly unjust.

WILLIAM LOCHREN,
Counsel for Plaintiff in Error.

Supreme Court of the United States,

OCTOBER TERM, 1878.

No. 113.

THE MISSISSIPPI AND RUM RIVER BOOM COMPANY,
Plaintiff in Error,

vs.

WILLIAM C. PATTERSON, JR.,
Defendant in Error.

ERROR TO CIRCUIT COURT, DISTRICT OF MINNESOTA.

POINTS, AUTHORITIES AND BRIEF OF DEFENDANT IN ERROR.

CHAS. E. FLANDRAU,
Counsel for Deft. in Error.

Pioneer Press.

Supreme Court of the United States.

THE MISSISSIPPI AND RUM RIVER BOOM COMPANY,
Plaintiff in Error.

vs.

WILLIAM C. PATTERSON, Jr.,
Defendant in Error.

BRIEF OF DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

The defendant in error was the owner in fee of one whole island, and parts of two other islands in the Mississippi River fourteen miles above the Falls of St. Anthony, in the county of Anoka, State of Minnesota. This property is described as follows: Lots 5 and 6 in section 27, and lots 5 and 6 in section 35, all in township 31, of range 24, west of the fourth meridian. These islands are so situated as to form a line of shore with short intervals for the distance of about one mile parallel with the west bank of the river, and distant about one-eighth of a mile from that bank.

The land of the defendant in error covered the whole line

of this shore except a small space of about three rods in the center of the middle island, which belonged to the Boom Company, and the area of the land of the defendant in error on the three islands is 34 46-100 acres.

The pecular location of these islands rendered them specially available for the purposes of an extensive boom, capable of holding from twenty to thirty millions of feet of logs, and all that was necessary to accomplish this result was to connect them together by boom sticks and a few piers, and connect the lower end of the lower island with the west bank of the river in the same manner, thus forming a pocket a mile long and one-eighth of a mile in width into which the logs could float by the natural action of the current, and be securely held, making, with slight artificial aid, "the largest, and best, and safest boom of the company within their chartered limits." *Folio* 74, *page* 23 *of Record.*

The plaintiff in error seeks to condemn all the land of the defendant in error on these three islands, and the only question in the case on trial in the court below was the amount of compensation the defendant in error was entitled to receive, and the principles upon which such compensation was to be determined.

The commissioners awarded him $3,000. *Folio* 38¼. The jury allowed him $9,358.33. *Folio* 61. And the court on a motion made by the plaintiff in error for a new trial cut the the verdict down to $5,500. *Folios* 64-5.

The method of ascertaining the value of the land proposed to be appropriated by the plaintiff in error, which was adopted in the court below, was by taking the opinion of witnesses who were qualified to speak on the subject, and by introducing proof of sales of land somewhat similarly situa-

ted, and leases of shore rights by the plaintiff in error, for booming purposes. The errors complained of, are the allowance by the court below of certain questions to be put to the witnesses by the counsel for the land owner, which were objected to by the counsel for the Boom Company, and certain instructions asked by the Boom Company, and refused by the court; also certain instructions given by the court to the jury, which were excepted to by the counsel for the Boom Company,—all of which bear upon the one question, as to whether the adaptability of the land for boom purposes could be considered by the jury as an element of value in determining the amount of compensation to be allowed to the owner, and each of which will be discussed separately in the argument.

ARGUMENT.

As before stated, the only question at issue in this case is, what compensation was the land owner entitled to on the taking of his land for a public use? It is clear, that his land could not be taken without paying him its just and full value. The constitution of the State of Minnesota contains this provision:

"Private property shall not be taken for public use without just compensation therefor, first paid or secured."

Const. Art. 1, *Sec.* 13, *Bissell's Rev. Stats., vol.* 1, *page* 46.

The constitution of the United States declares as follows:

"Nor shall private property be taken for public use without just co npensation." *Article* 5 *of Amendments.*

The just compensation provided for in these constitutions has been held to mean the full and fair value of the land for all

and any purpose to which it may be put, and to which it may be made available by the owner, as a means of producing pecuniary returns.

This case is greatly simplified by the fact that the Boom Company has condemned the whole tract of land, thus cutting off any inquiry as to benefits or damages to the remaining lands of the owner, and confining the question to the simple one of the value of the lands taken.

The controverted point is simply, can the peculiar and natural adaptability of these islands to booming purposes be considered in estimating their value? It is perfectly evident from the case, that their situation in this respect constitutes their greatest element of value, as a matter of fact. This is found by the jury, and is apparent at a glance. But it is contended by the company that this element of value is wholly lost to the owner, because he is not capable of *personally* applying the lands to the special uses of a boom. The consequence of such reasoning is this: Here is a piece of land owned by one man, and its highest value to him is $300. It is transferred to another, and without any change in the land whatever, it is immediately transmuted into gold, and its value augmented fifty fold The statement of such a proposition seems to carry with it its refutation.

What constitutes the value of land in any case? *First*, the uses to which is adapted, and *second*, the demand that exists for its purchase. It would be absurd to say that a single island of the size of one of these three, lying in the Mississippi River so far from, or so near to the land as to be useless for any purpose, would be as valuable as any one of these three situated as they are. Why should it not be to a private owner who cannot operate a boom? The answer is clear. In the

case of the isolated island there would be no demand in the market for it at all, while in the case of the other there would be a great demand, not only by the Boom Company, but by others who would be desirous of purchasing for the purpose of selling to the Boom Company. And is the owner not to enjoy the benefits of this competition?

Suppose the case of a town in which there is but one eligible site for a hotel or an opera house. It is owned by a party who has no means or wish to erect either on it. A company is formed to build the hotel or opera house, what is the result? The land appreciates in value from the moment the project is agitated; everybody wants it; the company to apply it to the proposed use, and the others to sell to the company at a profit. In this case the owner can demand the full value, and derive the benefits of his sagacity or good luck in purchasing the land. There can be no doubt but that the value of the land in such a case is enhanced by the demand created through the wants and necessities of the company, and that the increased value belongs legitimately to the owner of the land.

There is no difference at all between the case supposed, and the case of a condemnation of the same land for a public use, as to the compensation to be paid. In one case the sale is voluntary, in the other it is compulsory; in both, the land owner gets the full value of his land. Why should not the party possessing the power of condemnation be compelled to pay the same compensation that the owner could have obtained at private and voluntary sale regulated by the demand for the land? The power of condemnation is only recognized and enforced to prevent obstinate and extortionate owners from claiming *more than just compensation* for their lands, and thus

embarrassing public improvements. It never was designed to deprive them of full and just compensation. In its practical operation it is an enforced arbitration upon the question of value. Whatever arbitrators agreed upon by the parties would award as the just value, or in other words, what the owner ought to sell for, the commissioners or jury ought to award as the value of the land, taking into consideration every element of value arising from any source of demand, or peculiar value the land may possess to any one for any purpose. Matters of mere sentiment, such as picturesqueness of situation, fine views, patriotic or historic traditions, are elements of value, if they increase the demand for the land, even if the owner is as stolid as a mule, and as incapable of poetic or patriotic emotion as an Egyptian mummy.

Take, for example, a narrow neck of land, or a mountain pass which forms the only approach to a city for railroads; some sagacious pioneer detects its value in this respect long in advance of the building of the roads, and pre empts or purchases the land with express reference to this prospective demand, are we to be told that because he cannot build a railroad himself, he is to have his land wrested from him by those who can, regardless of its peculiar value as a gateway to the city? This would be to establish a rule that would not only do violence to the plainest dictates of justice, but would rob men of their vested rights under the guise of law.

But let us pursue the reasoning of the plaintiff in error to its logical consequences. Suppose the land in question, instead of being these islands, was a series of rocks, or a reef of rocks in the river admirably adapted to boom purposes, and of the full value of $50,000 to the boom company, but of no other value whatever; then, under the rule claimed by

the plaintiff in error, the boom company could condemn the land without any compensation to the owner. Of course such reasoning is false.

But there is another view in which the ownership and possession of these islands gave them a great value to their owner. It is proven in the case that they constituted one of the largest, best and safest booms of the company. Now, although the owner could not, perhaps, go into the business of booming himself, while this company held the monopoly of the ground, still the possession by him of this, the most commanding point in their works, furnished him with a lever with which to lift himself into the company on the most advantageous, if not controlling terms and conditions. This is a substantial commercial advantage, possessing a market, property value, and creating a demand for this land, not only from every stockholder in the boom company, but from everybody else desiring to become so.

But let us see what has been adjudicated by the courts upon this subject of the measure of compensation that the landowner is entitled to.

In Cooley's Constitutional Limitations 2d Ed. page 565. The author, in treating of this subject, after showing that the mere whims of the owner, growing out of personal association or kindred matters cannot be measured by a pecuniary standard, he adds:

"Concede to the government the right to appropriate the property on paying for it, and we are at once remitted to the same standards for estimating values which are applied in other cases, and which necessarily measure the worth of the property by its value as an article of sale or a means of producing pecuniary returns."

In the matter of Furman Street, 17 *Wend. at page* 670, the court says in discussing the question of compensation to the land owner for opening a street. *Bronson Judge.*

"In deciding these questions, neither the purpose to which the property is now applied, nor the intention of the owner in relation to its future enjoyment can be matters of much importance. In both cases the proper inquiry is, *what is the value of the property for the most advantgeous uses to which it may be applied.* If a man suffer his land to lie open and unimproved, that will not authorize the commissioners to say that it is worthless. They must award what the land would be worth in the hands of another who would cultivate or improve it, *that is the value to the owner, because he can procure that sum of money for it;* and in estimating the probable influence of any public improvement upon the value of land, the commissioners should not regard so much the intention of the owner in relation to the future use, as they should the purpose to which the property may be applied in the hands of one who is disposed to make it yield the greatest income."

In the case of *Brisbine vs. R. R.* 23 *Minn.* 114, a question arose identical in principle with the question we are considering. This case being in our own State, upon a cognate statutory subject, should have a controlling weight as a rule of decision in this court. 16 *Pet.* 1. The land sought to be condemned was a narrow strip at the foot of the bluffs in front of the city, and so situated as to furnish the only means of connection between the railroads coming in from the west and those coming in from the east. This circumstance made it very desirable for the railroads, and one of them sought to condemn it. On the trial the following question was put by counsel for the land owner. *Page* 120 *of Report.*

"Is there any other way whereby your road can connect with the St. Paul and Pacific; the Chicago, Milwaukee and St. Paul; the St. Paul, Stillwater and Taylors Falls, or the West Wisconsin road, except by passing down this path where you now are?" To which the witness answered, "Only by way of Minneapolis—not in this town."

The syllabus prepared by the court pursuant to statute, of the case on this point is as follows. *Page* 114.

"In proceedings by a railway company having its terminus in St. Paul to condemn a strip of land in that city, between the foot of the bluff and the Mississippi River, the circumstance that such strip of land affords the only route by which the company can make a connection with other railways terminating at that city, is proper to be considered by the jury in their award of compensation to the land owner."

The case of *Goodwin vs. Cincinnati and White Water Canal Co. et al.*, 18 *Ohio State*, 169, is exactly in point, and covers the precise question at bar.

A railroad company sought to appropriate the bed of the canal for its track, and an appraisement of its value was made. Stockholders of the canal company interfered as to the amount of the appraisal, which was made upon the theory that as a canal it was worthless, therefore the railroad company could take it regardless of its peculiar adaptation for railroad purposes.

We make copious extracts from this case on account, not only of its being very much in point, but also of the soundness of its reasoning.

The syllabus, on the measure of the damages, is as follows:

"The rule of valuation in such cases is, what the interest of the canal company was worth, not for canal purposes

merely, or for any other *particular use*, but what it was worth generally—*for any and all uses for which it might be suitable.*"

The court at *page* 181, after stating the nature of the title of the canal company to the property, uses this language on the question of the measure of value or compensation.

"True the evidence shows that the property was of little value *as a canal*, as such, in the language of the defendants' witnesses it, was "played out." It seems to have been as such, that it was appraised upon the interlocutory order of sale, and as such, it must have been valued by the two boards of directors at the time of its sale, or *pro forma* condemnation. This was no fair method of estimating the value of the property. *The true value of anything is what it is worth when applied to its natural and legitimate uses—its best and most valuable uses.* The estimate should have been of its value *generally—for any and all uses*—and not for any particular, and especially not for an inferior and inappropriate use. It is vain to say that the property is worth little to the canal company, because they have no power to convert it into a railroad. The stockholders and creditors of the canal company could organize *themselves* into a railroad company, at any time, and thus realize the full value of the easement. *But even if they could not, that is no good reason why their property should be taken from them at less than its real value.*"

This reasoning accords perfectly with that of Justice Bronson in the case above cited from 17 *Wend. at page* 670, where he says "the proper inquiry is, what is the value of the property *for the most advantageous uses to which it may be applied.*"

Matter of the N. Y. Cen. & H. R. R. R. Co. 13 *Sup Ct R. N. Y. Also cited as* 6, *Hun.* 149.

In this case the railroad company sought to condemn cer-

tain city lots in New York, which the owner had purchased with others, for the purposes of a gas company. There were several theories of damage urged by the owner, but the court held as follows:

"It is our opinion, therefore, that the questions for the consideration of the commissioners were properly these: *First*, and principally, the value of the lots actually taken by the railroad company for the new route; and in estimating such value the commissioners are not limited to the value of the lands as city lots, *but should consider evidence of their value for any purpose for which they could be used and appropriated.*"

In *R. R. vs. Braham* 79 *Penn. St. Rep* 447. The question was upon the value of land taken for railroad purposes. The sylabus is as follows:

"In estimating the market value of land, everything which gives it intrinsic value is to be taken into consideration."

And the court says at *page* 453: "Land may be applied to various purposes and possesses value for distinct objects. It may be devoted to agriculture; improved by the erection of buildings, or the opening of mines; or it may be adorned for the sole object of contributing to the pleasure or gratifying the taste of the owner. The construction of a railroad through it might utterly destroy its value for some purposes, and yet greatly increase it for others. *It is its general market value for any purpose that will induce persons to purchase, which is the true test.*

Harrison et al. vs. Young et al. 9 *Georgia*, 359. This was the case of a bridge company taking land for one of the abutments of the bridge. On the subject of damages the syllabus read.

"The value of land taken for public use is not restricted to

its agricultural or productive qualities, but inquiry may be made as to all other legitimate purposes to which the property could be appropriated."

The court says at *page* 364. "The value of land or anything else, is its price in market. Concede then that the right to erect this bridge is not in the Harrisons, [the land owners] but has been bestowed by the State upon this company, ought not the owners of the land to be paid for the worth of the site to the company? Who, in making investments of capital in real estate, is not influenced by the consideration that it will be valuable for a town, bridge, ferry, mill, manufacture, &c.?"

Young Assignee vs. Harrison et al., 17 *Georgia* 30.

This seems to be the same case as the last, or growing out of the same facts, and the court adheres to its former decision as to the measure of damages, and in the opinion presents some strong reasons in support of its views.

Robb vs. Turnpike Co., 3 *Metcalf, Ky.*, 117.

The rule of damages adopted in this case, (following *Nash vs. R. R. Co.*, 17 *B. Monroe*, 178,) and which seems to be the rule in Kentucky, is peculiar, but just and logical. The company took a piece of land for the purposes of its road, and the court says the measure of damages is what the land was worth to him (the land owner) considering its relative position to his other land, and the other circumstances which may diminish or enhance that value. And add "the inquiry should rather be, what would be its value to him, situated as it is, if he were not the owner of it, but owned the adjacent property under the circumstances as they now exist."

Trustees of College Point vs. Dennett, 5 N. Y. S. C., Thompson & Cook, page 217.

This case is exactly in point. The village of College Point undertook to condemn a pond or lake for the purpose of supplying therefrom pure and wholesome water to the village. On the question of value, the owner offered to show that there was not a pond except his within a radius of six miles that could be made a source of supply for the village. This evidence was ruled out, and the court on setting aside the award of the commissioners says:

"It was not for the applicant to limit the value of the pond proposed to be taken, as a mill-pond, or as an ice pond. If it had a value for any purpose in excess of values for such purposes, it would be the right of the land owners to receive such value by the award of the commissioners."

This is exactly what we claim for our islands. If they possessed any value for *any* purpose—*booming* or anything else, it was our right to receive such value when they were taken from us.

ANSWER TO SPECIFIC EXCEPTIONS OF PLAINTIFF IN ERROR.

I.

The first specific objection and exception of the plaintiff in error, is found in *folios* 74-5, *on page* 23 *of the Record.* It arises on the following question put to the witnesses called by the land owner on the question of value:

"What is the value of the land of the plaintiff on these islands for any and all purposes, including its adaptability for

boom purposes, taking into consideration the fact that it cannot be used by the plaintiff for boom purposes, but also taking into consideration the fact that it is adapted for boom purposes ?"

This question was allowed to be put by the court, and the counsel for plaintiff in error, excepted.

The court will see on an analysis of this question, that it is very carefully framed, upon the theory, that while the jury had the right to consider the adaptability of the islands for boom purposes, they were to keep in mind the fact that they were not available to the owner for that purpose. They were to give him such additional value as this peculiar use gave to the islands in the general market, by creating for them an additional demand ; but they were to estimate that value with the qualification that he could not use them for the special purpose. In other words, they were to give him the value of what was taken from him, but not the valne of what was received by the Boom Company enhanced by the possession of the power to appropriate them to the purpose of booming.

To have refused this evidence, would have been to deprive the land owner of the most important element that went to give general market value to his property, and to appraise the value solely upon a consideration of the most inferior use to which the property could be put. No one would buy these islands for farming purposes. Everybody would buy them in consequence of their adaptability to booming purposes, because they could always sell them at any moment for that purpose.

Either all of the cases we have cited were wrongly decided, or this question was correctly allowed.

II.

The second exception is found *folio* 77–8, *on page* 24 *of the Record.* Mr. Merriman, a stockholder and former officer of the Boom Company, had been examined as a witness for the company, and had given his opinion as to the value of the land, which he put at a nominal figure. (*Fol* 76.) We knew that the company was paying for *half* of the other side of the boom, a rental of seven hundred dollars per year, a sum equal to a value of $14,000.00 for the whole shore right on that side, and we thought our side of the boom was worth as much, less the artificial structures necessary to make it continuous. So on cross-examination, in order to show the insincerity, or ignorance, of the witnesses, we called out the existence of the Weaver lease, and then asked the question: "What rent does the defendant pay Weaver?" And the witness answered, "Seven hundred dollars per year."

This was not only proper cross-examination to show the absurdity of the low estimate of value put on the land by the witness, but it was a very material fact to prove the actual value of the land.

The court will see that the boom company had been permitted to show the purchase by it of other islands somewhat similarly situated, and parts of two of these islands as evidence of value. (*Folios* 76, 77; *pages* 23, 24.) Why, then, should we not be permitted to show other instances of the acquisition of shore rights for boom purposes by the company on the question of value; and especially was it material for the jury to know what the company had paid for the use of the west side of this very boom, as throwing light on the value of the east side.

A witness who gives an opinion on the value of land, may always be cross-examined as to all the sources of information upon which he bases such opinion.

III.

The third and next exception taken by the plaintiff in error is to the following portion of the charge of the court, found in *folio* 83, *on page* 26 of the Record. The exception is in *folio* 85.

"It is yet true, that if these islands are particularly adapted for boom purposes, and if this adaptability is an element which creates an additional demand for these islands, and confers upon them an additional value, this may and should be considered by you in ascertaining the value of the plaintiff's lands."

The court will see that this part of the charge is entirely consistent with the theory which the court adopted as the proper measure of damages, and on which the case was tried. It simply declares that if the islands had a peculiar adaptability to boom purposes, and this feature gave them an additional market value, by creating an additional demand for them, then the owner was entitled to have it considered.

Standing alone, there can be no doubt about the correctness of the charge; but, in order to appreciate its exact meaning, and understand it in all its bearings, it should be read with the two preceding paragraphs of the charge, which are as follows:

"It, therefore, follows that the plaintiff could not himself use his islands for boom purposes, and hence he is not to be allowed as an element of damages that he is deprived of the right to use them in this manner."

"The right of the boom company to use these islands when acquired in connection with their other property for boom purposes, is a franchise conferred upon the company, and upon no one else, by the Legislature. It is not relevant for the jury to allow what the islands, when acquired by the company, will be made worth to the company by reason of the legislative franchise above mentioned."

The charge, taken together, excludes all inquiry into any element of damages, save such as gave the islands a greater market value, through an increased demand for them, and that is clearly a value that attaches to every man's land, no matter from what source it arises.

But the plaintiff in error has no right to complain of this or any other part of the charge, because it requested the court to charge the jury exactly to the same effect, and the court did so in the language asked, and in connection with the part of the charge excepted to.

Immediately following the part of the charge excepted to, the court says: (*Folio* 83, *p.* 26.)

"In this connection I charge you, in the language of the requests submitted by counsel for the defendant, as follows:

"*Second.*—The plaintiff cannot lawfully use this land for boom purposes. Neither could any person or corporation to whom he could sell it, aside from the defendant. Its adaptability for boom purposes is therefore not an element of value to him, excepting in the sense that it makes the land desirable for the defendant, and therefore more readily saleable."

In this request the plaintiff in error concedes the whole theory of the defendant in error, and that adopted by the court in the trial of the case, to wit: that the adaptability of the islands for boom purposes was only available to the

owner as an element of value, so far as it created a demand for the land and made it more readily saleable, and to that extent he was entitled to have it considered by the jury.

We are utterly at a loss to discover any difference between what the counsel asked the court to charge, and what the court did charge in the clause which is excepted to. The exception should for this reason be disregarded.

IV.

The fourth exception of the plaintiff in error is found in *folios* 85, 6, *pages* 26, 7 *of the Record.*

Its counsel asked the court to charge the jury as follows:

"The plaintiff, Patterson, is entitled to have the value of the land in question at its worth to him for any lawful use to which he could apply it, or at the price for which it could be sold fairly. But he is not entitled to recover any particular or special value which the land would have to no one but the defendant, for use only in connection with defendant's chartered franchises."

This the court refused, and there can be very little doubt but that such refusal was correct for the following reasons:

The request limits the value of the land to such uses only as "he [Patterson] could apply it," and ignores *any* value which would be added to it in consequence of its adaptability to the uses of the defendant. In both these particulars the request was erroneous. The value was to be tested by a consideration of any and all uses to which the land could be put, whether by the owner, the Boom Company, or any one else, so far as any such use created an additional or increased demand in the market for the land and thus added to its value.

We may add that the whole subject involved in the request is covered by the general charge of the court, and for that reason also it was properly refused. A court may always refuse to charge in the particular language of a request what it has substantially charged before. The whole ground of this request is covered in the fullest manner, accompanied with the proper qualifications and limitations.

V.

Exception 5th is found in *folio* 86, *page* 27. The counsel for the boom company asked the court to charge the jury as follows:

"There is no one in existence except the defendant who can lawfully use the land in question for boom purposes, and the jury have no right to speculate on any supposition that any other person or corporation will ever have such right, or that there will be any competition for the land for this particular use."

The court refused this request. The court had already charged the jury in its general charge, that the defendant was the only party who could use the land for boom purposes. There was nothing in the case to raise any supposition that the jury were going to "speculate" upon anything, or that they needed any such caution from the court. They were sworn to decide the case according to the law and the evidence, and until something happened to indicate that they were disposed to do otherwise the court was not called upon to insult them by any such insinuation as is conveyed by the request. The part of the request which would cut them off from considering the probabilities of competition for the land

on account of its adaptability to boom purposes, was of course properly refused, because, as the court had previously charged that if this peculiar use to which the land was adapted did create an additional demand for the same in the market, the jury had the right to consider the same.

VI.

The next exception of the plaintiff in error is found on *page* 27, *at folios* 86, 7, and arises as follows: The counsel for the defendant asked the court to charge the jury as follows:

"*Fifth.*—In considering the testimony as to the value of this land, the jury should regard with caution statements of value by witnesses which appear to be merely speculative. A safer criterion to arrive at the true value of the land will be found in the testimony respecting the prices for which this identical land, and other lands on the same islands, and other lands adopted to like uses, have recently been sold in bona fide sales."

The court refused to charge in the language of this request, because the same was covered by the previous charge of the court.

If the court will turn to *page* 26, *at folios* 84–5, it will see that the court, in its general charge, had covered all the ground embraced within this request. There was no sense in repeating the same to the jury, and the court did right in refusing to do so.

It is rather curious, however, to find the defendant's counsel asking the court to charge the jury that the best method of ascertaining the value was to be found in sales of land similarly situated, when he so recently was objecting to our

proving by the witness Merriman what the boom company was paying Weaver for the use of the other side of this very boom. *See page* 24, *fols.* 77–8, and *point* 2 *of this Brief*, where this objection is considered.

These inconsistencies seem to indicate that the case was tried on the part of the defendant below without any very well settled theory of how the damages should be ascertained.

VII.

The next exception is found on *page* 27 *in folio* 87. The defendant's counsel asked the court to charge the jury as follows:

"*Sixth.*—As the defendant has the right to take this land for a public use on compensation to the owner, its adaptability to uses to which the defendant can alone apply it, cannot largely increase its value to the owner, and the jury have no right to increase their finding as to its value largely on this account. They would not, for example, be entitled to double the value of the lands on account of this consideration alone."

This request the court refused. The purport of this request is so palpably to ask the court to usurp the province of the jury and decide the fact, that we deem it unnecessary to expend any argument upon it. The court could not tell the jury whether any particular element of value "*largely*" affected such value, or slightly affected it, or whether they could or could not "*double*" the value of the land by reason of the existence of such element. All such matters were for the jury, after the court had told them, as a matter of law, that they could consider such element as affecting the value at all.

But we desire here to suggest to the court, that when the counsel for the defendant admits that the adaptability of the islands to boom purposes may be considered by the jury as affecting their value in the hands of the owner in this suit to any extent, he, by such admission, surrenders his case altogether, because if the jury could legitimately regard this element as one increasing the value to the owner, who else but the jury was to determine the extent of such increase? And the counsel for the defendant certainly does admit this proposition all the way through the Record, and especially requested the court at *folio* 83, to charge the jury that "Its adaptability for boom purposes is therefore not an element of value to him (plaintiff) excepting in the sense that it makes the land desirable for the defendant, *and therefore more readily saleable.*"

Now, this is all we ever claimed, and all the court charged to wit: that we were entitled to the increased value of the land arising from the increased demand for it, resulting from its adaptability to boom purposes.

There seems to be a very general harmony as to the views of all parties concerning the measure of damages in this case, and nothing to complain of, so I think the judgment should be affirmed.

CHAS. E. FLANDRAU,
Attorney for Deft. in Error.

Supreme Court of the United States.

THE MISSISSIPPI AND RUM RIVER BOOM COMPANY, Plaintiff in Error,

vs. No. 113.

WILLIAM C. PATTERSON, Jr.,
Defendant in Error.

REPLY OF DEFENDANT IN ERROR TO BRIEF OF COUNSEL FOR PLAINTIFF IN ERROR.

CHAS. E. FLANDRAU,
Counsel for Deft. in Error.

Pioneer Press.

Supreme Court of the United States.

THE MISSISSIPPI AND RUM RIVER BOOM COMPANY,

Plaintiff in Error,

vs.

WILLIAM C. PATTERSON, Jr.,

Defendant in Error.

REPLY OF DEFENDANT IN ERROR TO POINTS AND ARGUMENT OF PLAINTIFF IN ERROR.

As it does not appear in the record that any question was made by the plaintiff in error upon the jurisdiction of the circuit court to entertain the cause, and not having seen the brief of the counsel for plaintiff in error at the time of printing our own, we did not discuss that point, but as the counsel seems to base the principal part of his argument upon the question of jurisdiction we deem it proper that we should reply.

We concede that the exercise of the power of eminent

domain by a State is an act of sovereignty, but we contend that such act had been fully accomplished in this proceeding before the case got into tho district court of the State of Minnesota by appeal from the award of the commissioners. The land is condemned, and the power of eminent domain fully exercised and accomplished when the proceedings prescribed by the company's charter for this purpose are gone through with, and the award of the commissioners fixing the amount of the compensation to be paid is filed. The condemnation of the land is consumated by the taking under the sovereign authority, and that is the only sovereign act in the proceeding, the rest is all judicial. There is no appeal given from any of these proceedings except upon the one point of the amount of compensation awarded. No judgment is required. If both parties are satisfied with the sum awarded, and the company pays it, no judgment can be entered, (*charter, sec.* 13) and no further act is requisite to perfect the condemnation. If an appeal is taken it presents to the appellate court no question but the sufficiency of the amount awarded, and no other can be litigated on the appeal.

Turner vs. Halloran, 11 *Minn.* 253.
Schermeely vs. R. R., 16 *Minn.* 506.
Warren vs. R. R., 18 *Minn.* 384.
Ripp vs. R. R., 20 *Minn.* 187.

When the appeal gets into the district court of the State it becomes a *case* in that court upon the same footing as

any ordinary case in the court. The charter of the company provides as follows on this point, section 13, "and upon receiving such notice the clerk shall enter the appeal as a case upon the docket of said court, setting down the owner or owners, and person or persons claiming an interest in said land, embracing all persons so having received such notice from the said commissioners as plaintiff, and the said company as defendant; and the said court shall proceed to hear and determine such case in the same manner that other cases are heard and determined in such court."

Now when the case reaches this point, what have we before us? A proceeding which possesses every element of a civil action at law for the recovery of money. Here we have a plaintiff and a defendant, an issue in which the plaintiff asserts that the commissioners have not awarded him the just value of his land taken from him, which is denied by the defendant, and a tribunal of general jurisdiction in which this issue is to be tried "in the same manner that other cases are heard and determined in such court." The charter further provides (*sec* 13) that after the court or jury has assessed the value of the property taken, "the court shall proceed to render judgment against said company for the amount of said assessment in favor of the plaintiff or plaintiffs in such case." There is no judgment but a simple money judgment for the amount. So it is clear that in this appeal there is no exercise of the power of eminent domain, no exertion of sovereignty except such as is required to render a simple money judgment, and

nothing but a simple suit at law to determine the value of a tract of land. The exercise of the sovereignty has been exhausted before the issue triable on this appeal is made up.

This issue, being one between a citizen of Illinois and a citizen of Minnesota, is it in such a *suit* as can be removed from the State to the Federal court for trial? The act of Congress of March 3, 1875, provides, in *section* 2, "That any suit of a civil nature at law or in equity now pending or hereafter brought in any State court * * * * * in which there shall be a controversy between citizens of different States * * * * either party may remove said suit into the circuit court of the United States for the proper district." Evidently this is such a *suit* as contemplated by this act, and the judiciary act of 1789, as removeable to the Federal courts. *Green vs. Liter*, 8 *Cranch* 229. Which was a writ of right. *Weston vs. Charleston*, 2 *Peters* 449. Which was a writ of prohibition. *Kohl vs. United States*, 1, *Otto* 367. Opinion, p. 375. Where the court holds that the proceeding to condemn the land itself is such a *suit*. And still more evident is it that in this *suit* there is a controversy between citizens of different States.

The counsel's supposititious case of a State empowering one of its executive officers to obtain land by condemnation, and making no provision for the mode of procedure, and such officer commencing a suit in a State court for the purpose, fails in analogy, because in that case the suit would be for the express purpose of enforcing the right of eminent domain, and whether a Federal court could

assume jurisdiction on removal is of no moment here. It is not illustrative of the question at bar, there being no question of the exercise of that sovereign power in this suit, but simply a question of damages.

SECOND.

The counsel makes but one citation of authority in support of the measure of damages, or rule of valuation, and that in *Railroad vs. Elliott*, 5 *Nevada*, 358. An examination of that case will make it appear that it was correctly decided, and that the theorizing of the judge who delivered the opinion, is all outside of the point involved, and shows that he did not understand or touch upon the sound principle of damages in such cases, which was so readily grasped and accurately expounded by Justice Dillon in this case.

The question put to the witness in the Nevada case and ruled out is as follows:

"What is the value of the tract of land claimed by me, taking into consideration the fact that the mine of the Cholar Potosi Company lies west of it; the mine of the Julia Gold and Silver Company to the south, and the mine of the Senator Company to the north. That these mines may be developed and turn out rich. That the railroad company has located its road near this tract, and that it desires it for the purpose of putting up its machine shops and other buildings, and that its value will be increased by the erection of such buildings."

This question sought to give the land owner the increased

value accruing by the erection of the company's buildings, after its acquisition of the lands, and covered too much speculative ground concerning the location of surrounding mines, which might have been a hundred miles off from anything that appears. It was clearly inadmissible.

The supposition of the counsel of a high rocky or sterile piece of ground commanding a harbor, and needed as the site of a fortification, falls under the discussion in our brief on the subject of damages. The government would have to pay the fair market value of land, and if such value was enhanced by the peculiar adaptation of the same to purposes of fortification, that element would of right enter into the measure of compensation, keeping constantly in mind, that the land owner would not be entitled to demand the value which would accrue to the government by the taking, but only the loss sustained by him from such taking. A very clear distinction.

The argument of counsel for plaintiff in error on the question of the damages is equivalent to a concession that we are right on that point.

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